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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 271.

MARCUS A. HANNA, ROBERT R. RHODES AND JAMES F. RHODES, PLAINTIFFS IN ERROR,

vs.

JOHN B. MAAS, NICHOLAS LONSTORF AND JOHN P. MITCHELL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

FILED AUGUST 2, 1884.

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1 STATE OF MICHIGAN, } ss:
Marquette County, }

The circuit court for the county of Marquette to the sheriff
[SEAL.] of the county of Marquette, Greeting:

In the name of the people of the State of Michigan you are commanded to summon Marcus A. Hanna, Robert R. Rhodes, and James F. Rhodes, partners under the firm name of Rhodes and Company, to be and appear before the circuit court of said county, at the court-house in the city of Marquette, in said county, upon the fourth day of February next, then and there to answer unto John B. Maas, Nicholas Lonstorf, and John P. Mitchell, of said county, in a plea of trespass on the case upon the premises, to their damage fifteen thousand dollars, which shall then and there be made to appear, and of this writ make due return.

Witness the Honorable Wm. D. Williams, circuit judge, at the city of Marquette, this sixteenth day of January, in the year of our Lord one thousand eight hundred and seventy-nine.

WM. ROWLAND, *Clerk.*

DAN. H. BALL,
Att'y for Pl'ffs.

Filed Feb. 4th, 1879.

GAD. SMITH,
Deputy Clerk.

STATE OF MICHIGAN, } ss:
County of Marquette, }

On this sixteenth day of January, A. D. 1879, I hereby certify and return that I served the within summons upon Marcus A. Hanna, one of the within-named defendants, in said county of Marquette, by personally delivering to said Marcus A. Hanna a true copy hereof and exhibiting to him this original under the seal of the county.

Fees, $1.00.

ANDREW A. ANDERSON, *Sheriff.*

2 STATE OF MICHIGAN, } ss:
County of Marquette, }

The Circuit Court for the County of Marquette.

John B. Maas, Nicholas Lonstorf, and John P. Mitchell, of said county of Marquette, plaintiffs herein, by Dan. H. Ball, their attorney, complain of Marcus A. Hanna, Robert R. Rhodes, James F. Rhodes, of the city of Cleveland, in the State — Ohio, partners under the firm name of Rhodes and Company, defendants, who have been duly summoned to answer the said plaintiffs in a plea of trespass on the case upon promises—

For that whereas — heretofore tried on the twenty-second day of August, A. D. 1874, the said defendant being engaged in the business of selling pig-iron upon —, in the city of Cleveland aforesaid, and making advances thereon in consideration that the plaintiffs would deliver to them for sale upon commission — quantity of

"Michigan charcoal pig-iron," so called, which the said plaintiffs held and were receiving in pledge for themselves and for the First National Bank of Negaunee, for advances made by them and by said bank thereon, to a large amount, to wit, to the amount of twenty-five dollars per ton, besides interest accrued, then and there undertook and faithfully promised the plaintiffs, who were represented in said transaction by Peter White, as their agent, that they would receive said pig-iron to the amount of two thousand tons, and would assume and pay the said advances thereon to the amount of twenty-five and $\frac{25}{100}$ dollars per ton upon receipt of said iron, and would, in addition thereto, pay lake freight and dockage thereon to the amount of two dollars per ton.

3 And the said plaintiffs, confiding in the said promise and undertaking of the said defendants, caused their said pig-iron to be shipped and delivered to said defendants by Peter White, their said agent, during the months of August, September, October, and November following the day last aforesaid, for sale upon commission, in accordance with said agreement, to a large amount, to wit, to the amount of two thousand tons of pig-iron of great value, to wit, of the value of sixty thousand dollars, whereby the said defendants became and were liable to pay the plaintiffs advances thereon to the amount of $25.25 per ton, to wit, to the amount of fifty thousand dollars.

And also for that whereas the said defendants, being engaged in the business of selling pig-iron as aforesaid, at the city of Cleveland aforesaid, heretofore, to wit, on the twenty-second day of August, A. D. 1874, in consideration that the plaintiffs would ship and deliver to the defendant, for sale upon commission, a quantity of pig-iron which they then held and were reserving as their property, undertook and then and there faithfully promised the plaintiffs that they would receive the said pig-iron and sell the same at as favorable prices—with reasonable deligence could be obtained therefor, and that after such sale and as said iron should be sold, and upon receipt by them of the proceeds thereof, after deducting from said proceeds all advances made by them to the plaintiffs thereon, and all advances made by them for freight, insurance, and other charges, with the interest on such charges, and their reasonable charges and commissions, they would pay over the remainder of the proceeds of said pig-iron to the plaintiffs on demand.

4 And the said plaintiffs, relying upon and confiding in the said promise and undertaking of said defendants, afterwards, during the months of August, September, October, and November of said year, shipped and delivered to the said defendants a large quantity, to wit, two thousand tons, of their said pig-iron, of the value of sixty thousand dollars, which the said defendants received for sale under their agreement and promise aforesaid.

And the plaintiffs aver that the said defendants have long since sold all the said iron so delivered to them by the plaintiffs, and have received the proceeds thereof, to wit, the full value thereof, as above stated, and that after deducting all advances made by the defendants thereon, with the interest and all their reasonable charges and com-

missions thereon, there remains of such proceeds due and payable to the plaintiffs from the defendants a large sum of money, to wit, the sum of thirty thousand dollars.

And also for that whereas the said defendants, being engaged in the business of selling pig-iron as aforesaid, at the city of Cleveland aforesaid, heretofore, to wit, on the twenty-second day of August, A. D. 1874, in consideration that the First National Bank of Negaunee, a corporation doing business in the said county of Marquette, would ship and deliver to the defendants for sale upon commission a quantity of pig-iron which said bank then held and was receiving as its property, undertook and faithfully promised the said First National Bank of Negaunee that they would receive the said pig-iron and sell the same at as favorable prices as could with reasonable diligence be obtained therefor, and after such sale, and as said iron should be sold, and upon receipt by them of the proceeds thereof, after deducting all advances made by them to the said bank thereon, and all advances made by them for freight, insurance, and other charges, with the interest on such advances, and their reasonable charges and commissions, they would pay over the remainder of the proceeds of said pig-iron to the said First National Bank of Negaunee on demand; and the said bank, relying upon and confiding in the said promise and undertaking of the said defendants, afterwards, to wit, during the months of August, September, October, and November, 1874, shipped and delivered to the said defendants a large quantity, to wit, two thousand tons, of its said pig-iron, of the value of sixty thousand dollars, which the said defendants then received under their agreement and undertaking aforesaid.

And the plaintiffs aver that heretofore, to wit, on the fifteenth day of January, A. D. 1879, all sums of money due and payable to the said bank from said defendants on account of said iron, and all iron remaining on hand unsold, with all right of action of said bank against said defendants therefor, was duly assigned by said bank to the said plaintiffs, whereof the defendants had notice.

And the plaintiffs further aver that the said defendants have long since sold all the said iron so delivered to them by the said bank and have received the proceeds therefor, to wit, the full value thereof, as above stated; and that after deducting all allowances made by the defendants thereon, with the interest and all their reasonable charges and commissions thereon, there remains of such proceeds due and payable to the plaintiffs, as assignee of said bank, over and above all sums paid by said defendants to said bank, a large sum of money, to wit, the sum of thirty thousand dollars.

And in consideration of the said several promises, respectively, the said defendants afterwards, to wit, on the fifteenth day of January, A. D. 1879, promised the plaintiffs that they would pay them the said several sums of money whenever they should be thereunto requested; yet the said defendants, disregarding their said promise, have not as yet paid the said several sums of money to the plaintiffs (although often requested) nor any *nor any* part thereof,

but so to do have hitherto wholly neglected and refused, and still refuse, to the plaintiffs' damage of thirty thousand dollars; and they bring suit, etc.

DAN. H. BALL,
Attorney for Plaintiffs.

Filed February 21st, 1879.

GAD SMITH,
Deputy Clerk.

7 In the Circuit Court for the County of Marquette.

MARCUS A. HANNA, Impleaded with ROBERT R. RHODES and JAMES F. RHODES,
ads.
JOHN B. MAAS, NICHOLAS LONSTORF, and JOHN P. MITCHELL.

The defendants, Marcus A. Hanna, comes and demands a trial of the matters set forth in the plaintiffs' declaration.

M. H. MAYNARD,
Att'y for Def't Hanna.

Filed March 27th, 1879.

WILLIAM ROWLAND, *Clerk.*

8 At a general term of the circuit court for the county of Marquette, continued and held at the court-house in the city of Marquette, in said county, on the second day of May, in the year of our Lord one thousand eight hundred and seventy-nine.

Present: The Hon. William D. Williams, circuit judge of the 12th circuit.

The court was opened for business in due form.

In case of—

JOHN B. MAAS, NICHOLAS LONSTORG, & JOHN P. MITCHELL
vs.
MARCUS A. HANNA, ROBERT R. RHODES, & JAMES F. RHODES.

The defendant, Marcus A Hanna, the only defendant served with process in this cause, having filed his petition and bond, as required by act of Congress, for the removal of this cause to the circuit court of the United States, on motion of M. H. Maynard, att'y, for said defendant, ordered that further proceedings in said cause in this court be stayed, and that said defendant have leave to remove the same to the circuit court of the United States for the northern division of the western district of Michigan.

9 STATE OF MICHIGAN, } *ss:*
County of Marquette, }

The Circuit Court for the County of Marquette.

JOHN B. MAAS *et al. vs.* MARCUS A. HANNA.

COUNTY OF MARQUETTE, *ss:*

I, Wm. Rowland, clerk of the circuit court in and for said county,

do hereby certify that the annexed and foregoing are true copies of the record in the above-entitled cause; that I have carefully compared the same with the original files and record now remaining in my office, and that they are correct transcripts thereupon and of the whole of such originals.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Marquette, this third day of May, A. D. 1879.

[SEAL.] WM. ROWLAND, *Clerk*,
By GAD SMITH, *Deputy*.

Filed May 6th, 1879.

GAD SMITH,
Deputy Clerk.

10 UNITED STATES OF AMERICA:

September Term, Wednesday, September 7, A. D. 1881.

The court met pursuant to adjournment.

Present: Hon. Solomon L. Withey, district judge.

JOHN B. MAAS, NICHOLAS LONSTORF, and JOHN P. MITCHELL,
vs.
MARCUS A. HANNA, ROBERT R. RHODES, and JAMES F. RHODES.

By consent of parties in open court, it is ordered that the above-entitled cause be, and the same is hereby, continued upon payment by the defendants to the plaintiffs of the costs in term to be taxed.

11 UNITED STATES OF AMERICA:

May Term, Tuesday, July 18th, A. D. 1882.

Court met pursuant to adjournment.

Present: Hon. S. L. Withey, district judge.

JOHN B. MAAS, NICHOLAS LONSTORF, and JOHN P. MITCHELL
vs.
MARCUS A. HANNA, ROBERT R. RHODES, and JAMES F. RHODES.

The parties to this cause being in court, by their respective attorneys, ready for trial, thereupon came a jury, to wit, Nelson S. Pennors, Charles S. Parent, Henry C. Taylor, Peter Dolf, D. M. Shilden, Castle L. Nenan, Wm. A. Drum, W. B. Gage, Edmund D. Nelson, John Ruhel, John Nolan, and Edward Gaynor, good and lawful men, who being duly impanneled, tried, and sworn well and truly to try the issue between the parties, sat together and heard the evidence in part.

12 UNITED STATES OF AMERICA:

May Term, Wednesday, July 19, A. D. 1882.

Court met pursuant to adjournment.
Present: Hon. Solomon L. Withey, district judge.

JOHN B. MAAS, NICHOLAS LONSTORF, and JOHN P. MITCHELL
vs.
MARCUS A. HANNA, ROBERT R. RHODES, and JAMES F. RHODES.

The jury heretofore sworn in this cause sat together and heard further evidence therein, when a juror was withdrawn, and by consent of parties the remaining jurors were discharged, and the cause continued over the term upon payment by the defendants to the plaintiffs of the costs of the term and an attorney's fee of seventy-five dollars.

13 In the Circuit Court of the United States for the Western District of Michigan, Northern Division.

MARCUS A. HANNA, ROBERT R. RHODES, and JAMES F. RHODES
agds.
JOHN B. MAAS, NICHOLAS LONSTORF, and JOHN P. MITCHELL.

And the said defendants, by M. H. Maynard, their attorney, come and demand a trial of the matters set forth in the said plaintiffs' declaration.

M. H. MAYNARD,
Defendants' Attorney.

SIR: Please take notice that on the trial of this cause the said defendants will give in evidence and insist, under the general issue above pleaded, that at the time defendants made the agreement set forth in said plaintiffs' declaration (if any such agreement ever was made) it was represented to defendants by Peter White as an inducement and consideration for the making of such agreement that the said pig-iron was made and on hand ready for shipment to the defendants; and the said Peter White then and there exhibited certain pig-iron to defendants as a sample of the pig-iron so to be shipped and delivered under said agreement, and then and there promised the defendants that the whole of the pig-iron to be shipped to them under said contract was equal to said sample in quality, and further state the said pig-iron should be shipped to defendants within a reasonable time.

14 And defendants will give in evidence and insist that Michigan charcoal pig-iron was a brand and kind of pig-iron well known in the market at the time said contract was made, having a well-known quality of a well-known and standard grade, and that said contract was made with reference to such quality and grade; that in fact when said contract was entered into a large part of the iron which was afterwards sent to defendants upon said contract was not then made; that the said iron which was sent was not equal to the said sample, but was greatly inferior thereto; that a large part

thereof was wholly unmarketable and entirely worthless for the usual purposes for which iron of that name and brand was commonly used; that the same was shipped and sent unreasonably late in the season; that in the meantime the market had greatly declined in price, and by reason of such delay defendants could not sell the same except at a loss; that by reason of the said delay and the inferior quality of said iron defendants refused to receive the said iron upon said contract, and did not receive the same upon said contract, but received the same only to be sold for what it might be worth and as commission merchants; that by reason of the plaintiffs' failure to comply with their said contract defendants had been greatly injured and have sustained damages to a large amount, to wit, to the sum of fifty thousand dollars, which said damages defendants will claim by way of recoupment against any demands of
15 the plaintiffs to be proved on the said trial, and have the balance certified in their favor.

M. H. MAYNARD,
Def'ts' Att'y.

To Dan. H Ball, pl'ffs' att'y.

Filed Nov. 14, 1882.

GAD SMITH,
Dep. Clerk.

16 In the Circuit Court of the United States for the Western District of Michigan, Northern Division.

JOHN B. MAAS, NICHOLAS LONSTORF, and JOHN P. MITCHELL
vs.
MARCUS A. HANNA, ROBERT R. RHODES, and JAMES F. RHODES.

And now at this day, to wit, on the 12th day of April, 1883, come the said plaintiffs, John B. Maas and Nicholas Lonstorf, by Dan. H. Ball, their attorney, and give the court to understand and be informed that after issue joined and since the last continuance of this case and before this day, to wit, on the 16th day of March, 1883, in the State of California, the said John P. Mitchell died, and the said John P. Maas and Nicholas Lonstorf survived him; therefore, on motion of Dan. H. Ball, attorney for said surviving plaintiffs—

Ordered, That no further proceedings be had in this cause at the suit of said John P. Mitchell, and that said action proceed in favor of said surviving plaintiffs.

DAN. H. BALL,
Att'y for Surviving Pl'ffs.

17 UNITED STATES OF AMERICA:

May Term, Tuesday, July 17th, A. D. 1883.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, northern division, begun and held at the United States court rooms, in the city of Marquette,

in said district, on Tuesday, the seventeenth day of July, A. D. one thousand eight hundred and eighty-three.

Present: Hon. Solomon L. Withey, district judge.

Court met pursuant to adjournment.

JOHN B. MAAS and NICHOLAS LONSTORF

vs.

MARCUS A. HANNA, ROBERT R. RHODES, and JAMES F. RHODES.

The parties to this cause being in court, by their respective attorneys, ready for trial, thereupon came a jury, to wit, S. P. Klinr, Jas. McKercher, Wolfred Been, Henry Roberts, Terrence Moore, Justin N. Mead, Harry Diamond, Alex. Shields, J. C. H. Pittier, George Ruppe, B. P. Robbins, and G. N. Cauklin, good and lawful men who, being duly impanneled, tried, and sworn, well and truly to try the issue between the parties, sat together and listened to the evidence in part.

18 UNITED STATES OF AMERICA:

May Term, Wednesday, July 18th, A. D. 1883.

Court met pursuant to adjournment.

Present: Hon Solomon L. Withey, district judge.

JOHN B. MAAS and NICHOLAS LONSTORF

vs

MARCUS A. HANNA, ROBERT R. RHODES, and JAMES F. RHODES.

The parties sworn as jurors in this cause sat together and heard the conclusion of evidence, the arguments of counsel, and the charge of the court, and retire- from the bar thereof in charge of Michael Quagle, an officer of the court duly sworn for that purpose, to consider of their verdict to be given, and after being absent for a time return into court and say upon their oath- that the said defendants did undertake and promise in manner and form as the said plaintiffs have in their declaration in this cause alleged against them, and they assess the damages of the said plaintiffs, on occasion of the premises, over and above their costs and charges by them about their suit in this behalf expended, at the sum of nine thousand one hundred and twenty dollars and fifty-two cents.

19 UNITED STATES OF AMERICA:

May Term, Friday, July 20, 1883.

Court met pursuant to adjournment.

Present: Hon. Solomon L. Withey, district judge.

JOHN B. MAAS and NICHOLAS LONSTORF

vs.

MARCUS A. HANNA, ROBERT R. RHODES, and JAMES F. RHODES.

The jury by whom the issue joined in this cause was tried having rendered a verdict in favor of the plaintiffs and against the defend-

ants, and having assessed the damages of the said plaintiffs, on occasion of the premises, over and above their costs and charges by them about their suit in that behalf expended, at the sum of nine thousand one hundred and twenty dollars and fifty-two cents, therefore it is considered that the said plaintiffs do recover against the said defendants their damages aforesaid by the jurors in form aforesaid assessed, together with their costs and charges aforesaid to be taxed. On motion of M. H. Maynard, defendants' attorney, ordered that the defendants have sixty days in which to move the court for a new trial of this cause, and that the time for presenting and settling a bill of exceptions therein be extended for the same period, and in the meantime further proceedings, except taxation of costs, be stayed.

20 In the Circuit Court of the United States for the Western District of Michigan, Northern Division.

JOHN B. MAAS and NICHOLAS LONSTORF

vs.

MARCUS A. HANNA, ROBERT R. RHODES, and JAMES F. RHODES.

And now comes the defendants and move the court to set aside the verdict and judgment in this cause and for a new trial thereof for the following reasons, to wit:

1st. Said verdict is contrary to law and against the weight of evidence.

2d. The court erred in allowing a certain computation made by Richard Blake to go the jury against the objection of the defendants' counsel.

3d. The court erred in refusing to charge that, until defendants had actual notice of the interest claimed by plaintiffs, they were entitled to treat Peter White, the assignor, as the owner and charge all advances to all the iron shipped by him under the contract.

4th. The court erred in charging the jury that during the time advances were made, or at the time the contract was made, there was evidence tending to show that defendants knew that other iron-holders beside Peter White were interested in the iron in controversy.

21 5th. The court erred in charging the jury that under the contract plaintiffs could recover against the defendants a larger sum than the net proceeds of the iron consigned to them if sold at fair prices and with reasonable diligence.

6th. The court erred in charging the jury and holding that under the evidence as presented by the plaintiffs a recovery could be had under the first count of the declaration.

7th. The court erred in refusing to charge as directed by the defendants and in the modification of request made by defendants.

8th. Because the said verdict is excessive and evidently based upon a misapprehension of the testimony and the law of the case as defined by the court.

Marquette, Mich., Sept. 12, 1883.

M. H. MAYNARD,
Def'ts' Att'y.

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22 In the Circuit Court of the United States for the Western District of Michigan, Northern Division.

JOHN B. MAAS and NICHOLAS LONSTORF
vs.
MARCUS A. HANNA, ROBERT R. RHODES, and JAMES F. RHODES.

SEPT. 12, 1883.

In the above-entitled cause it is hereby stipulated that the date for argument fixed by notice of motion for a new trial, this day served by defendants' attorney on plaintiffs' attorney, be postponed from 18th instant to Oct. 9th prox., at the same time and place.

And it is further stipulated that the time for settling a bill of exceptions be extended to the same 9th of October, and that a copy of the proposed bill be served on plaintiffs' attorney as soon as practicable, and not later than Sept. 29th instant.

DAN H. BALL,
Pl'ffs' Att'y.
M. H. MAYNARD,
Def'ts' Att'y.

Pursuant to the foregoing stipulation the time for hearing the motion for a new trial and for settling a bill of exceptions in the above-entitled cause is extended to the 9th day of October, 1883, at 10 o'clock a. m., until which time the hearing of said motion and settling a bill of exceptions are continued, and until such time as counsel can be heard.

Sept. 18, 1883.

S. L. WITHEY,
U. S. Dist. Judge.

Filed Nov. 22, 1883.

H. M. HINSDILL, *Clerk.*

23 UNITED STATES OF AMERICA:

November Term, Mond'y, —— 31, 1883.

Present: Hon. Solomon L. Withey, district judge.

JOHN B. MAAS and NICHOLAS LONSTORF
vs.
MARCUS A. HANNA, ROBERT R. RHODES, and JAMES F. RHODES.

The motion heretofore made to set aside the verdict and judgment and for a new trial of this cause having been brought on to be heard, and the court having listened to the arguments of counsel for the respective parties, and due deliberation thereon being had, it is ordered by the said court that the motion be, and hereby is, denied with costs of motion to be taxed to plaintiffs.

24 *Motion for a New Trial by the Defendants.*

The Circuit Court of the United States for the Western District of Michigan, Northern Division.

JOHN B. MAAS, NICHOLAS LONSTORF, and JOHN P. MITCHELL
vs.
MARCUS A. HANNA, ROBERT R. RHODES, JAMES F. RHODES.

Assumpsit.

Ball & Hanscom, pl'ffs' att'ys; M. H. Maynard and Estep, Dickey & Squire, def'ts' att'ys.

Decision by S. L. Withey, Dist. Judge.

The question made most prominent upon the argument of this motion for a new trial is whether the argument of commission merchants to advance a stated sum upon property consigned to them, under the facts of this case, can be enforced by suit. A statement of the material facts becomes necessary.

Peter White, the First National Bank of Negaunee, Michigan, and the plaintiffs each held a lot of charcoal pig-iron, pledged by the Michigan Iron Company of Marquette, Michigan, to secure considerable sums loaned to it by said parties. The defendants were commission merchants for the sale of iron and ore at Cleveland, Ohio. They entered first into an arrangement with the Michigan Iron Company and Peter White for the shipment to them at Cleveland
of the iron that had been pledged to Mr. White, agreeing to
25 advance to him $25.25 per ton on its arrival at Cleveland.

The full terms, written and unwritten, were that the iron was to be shipped by and in the name of Peter White, who was to forward the bills of lading, mak- sight drafts on defendants for the advance from time to time, and accompany such draft- with the note of the Michigan Iron Company, payable to the defendants Rhodes & Co. or order at four month-, for a sum which, when the note should be discounted at the rate of ten per cent. per annum, would just pay the draft.

Such was the agreement touching the one lot of iron in which White was interested. At a later hour of the same day the Michigan Iron Co. and the defendants, with the consent of Peter White, the plaintiffs, and the First National Bank of Negaunee, came to an agreement to include the other two lots of iron in which the plaintiffs and the bank were interested under the terms of the agreement as to the first lot of iron.

At the time of the first arrangement mentioned the defendants executed to White a written agreement to make to him an advance of $25.25 per ton on said lot of iron and now they annexed a clause enlarging the quantity of iron so as to cover the two lots last mentioned.

The following are copies of both agreements:

"MARQUETTE, MICH., *Aug.* 22, 1874.

"Peter White, Esq.:

"We will advance $25.25 per ton on 500 to 1,000 tons Michigan charcoal pig-iron when delivered at Cleveland.

"RHODES & Co."

26 "We will pay lake fr't and dockage, not to exceed $2.00 per ton on the above and increase the amount to 2,000 tons.

"RHODES & CO."

At least 1,980 tons were delivered to defendants, upon 1,095 tons of which they paid the agreed advance to Peter White, part of which he paid to one of the claims represented by the plaintiffs.

On 885 tons the agreed advance has not been paid, and these 885 tons are part of the iron to which the liens of the bank and of the plaintiffs related. Before all the iron had been delivered the defendants complained of the poor quality of the iron and wrote to Mr. White, under date of October 28, 1874:

"We will not advance any more money on what we have in yard after paying your draft, and not over $20.00 on any more to come. Our market is $28 to $30.00 per ton and prospects worse instead of better."

One more cargo of iron was shipped to and received by the defendants—about 190 tons—in the month of November, 1874.

On the 22*th* of May, 1875, the defendants wrote to Peter White in reply to his letter requesting an advance or to know if his draft would be paid:

"We are in receipt of yours of the 18th inst. and reply that we cannot comply with your request to advance the amount wanted on the Michigan iron for the reason that the iron in our hands will not sell for that amount of money."

27 What of the iron had not been sold in May, 1875, was sold by defendants subsequently, but at a price that did not net $25.25 per ton. They credited to the Michigan Iron Company for ac. Peter White, on their books the gross receipts for iron sold, and charged against all the iron whatever advances they made, the freight, dockage charges, and their commissions, and paid or tendered the balance.

But this did not make the advance equal to $25.25 per ton. Upon the trial it appeared that $20.00 per ton on the iron in which the bank and the plaintiffs were interested would be sufficient to satisfy their liens thereon, and the court held that there could be no recovery in excess of the indebtedness of the Michigan Iron Co. to them, secured by a pledge of the iron after deducting whatever had been advanced or paid by defendants on account of such iron.

The testimony showed and the jury must have found that under the ruling of the court there were several thousand dollars remaining unpaid, if the defendants are liable for even $20.00 per ton of the iron pledged to the plaintiffs and the bank, providing the iron was merchantable in quantity. Prior to the commencement of this

suit the plaintiffs became entitled to the claim of the bank, and White had transferred to them such interests as he represented.

The contention of the defendants upon this motion is, in substance, that they were dealing as commission merchants with the
28 owners of the iron. The Michigan Iron Company and the lienholders, whoever they were, that the relation of the parties to the iron and the nature of the business were such as to preclude any one from understanding that the defendants were to make an advance beyond the net market value of the iron under any circumstances. Unless the contract of factors and commission merchants is to be interpreted by a rule unknown to other contracts relating to commercial transactions, the mere statement of the case refutes the view contended for. The Michigan Iron Company was the general owner of all the iron which was to be sold on commission by the defendants, the proceeds to go to pay the debts of the general owner that were liens upon it, facts which must have been known to the defendants, as is apparent from the testimony, we think. They may not have known, and probably did not know, what particular relation, if any, existed between the plaintiffs and the iron, but that they knew that Mr. White was not a general owner, but represented special property interests in the iron there can be but little or no doubt, and that it was for that reason that the advance was to be paid to him.

But even if they did not have a definite understanding as to the relation of Mr. White, the plaintiffs, or the bank to the iron, they knew that under the arrangement Mr White, to whom they agreed to make the advance, was not to be liable back to defendants for any part of the sums they should advance, for such is the undisputed testimony of Mr. White.

29 It will be seen that White, the bank, and the plaintiffs consented to surrender possession of the property and give the absolute control of it to the defendants to sell, taking in place of their lien thereon the express agreement of the defendants to pay an advance on the iron, which, if performed, would satisfy the liens.

If the defendants did not understand the relation of the lienholders to the property it was their own fault or indifference.

They should have understood that there was some good reason why the advance was to be paid to Mr. White, and if it made any difference to them what his relation to the property was they were put upon inquiry. The real transaction was an agreement to loan to the Michigan Iron Company the sum of $25.25 per ton on not exceeding a given quality of pig-iron then existing, payable to Peter White upon the credit of the company, with the iron as security and with irrevocable power to sell.

The written agreement to mak- the advance was, on the trial, held binding on the defendants, and there has been presented no reason why that ruling should be changed.

Whether there was among the 885 tons of iron to which this suit relates that upon which no advance had been made enough unmerchantable iron to require the disallowance of any part of the

plaintiffs' claim was left to the jury under what are conceded to have been proper instructions.

The proofs have been carefully examined with a view to determine whether any of the lots of iron should have been rejected by
30 the jury. As to iron on which the advance was made up to and including October 27th, 1874, the defendants were not at liberty to reject it as unmerchantable on this trial, and particularly as to any iron they had sold under the original arrangement. Some of the testimony as to the number 3 iron being of poor quality or unmerchantable relates to the early shipments that were sold and on which advances were made to Mr. White. I am not able to say that it is manifest the jury were wrong in finding the 885 tons in question to have been merchantable iron under the instructions.

The only other objection that will be considered is whether the verdict is for too much. I do not think it is. Those tons of iron at $20.00 per ton, the extent of the lien of the plaintiffs thereon, amount to $17,700, which sum, the jury must have found, should have been advanced to Peter White for these plaintiffs.

On the 22nd day of May, A. D. 1875, the defendants wrote to Mr. White, in reply to his letter for the advance, that they refused to advance the amount for the reason that the iron in their hands would not sell for that amount. It was clearly unnecessary to go through the form of presenting a draft and the note of the Michigan Iron Co. after a blank refusal to pay any further advances.

I have computed interest on the $17,700.00 up to the time defendants made a payment to the plaintiffs of $10,000.00 and de-
31 ducted the payment, and in the same manner treated the second payment and given interest on the balance to the date of the verdict, and I find the sum to exceed the amount of the finding of the jury.

The motion for a new trial is denied, and an order will be entered accordingly, and for the costs of the motion to be taxed in favor of the plaintiffs.

32 MAR. 28, 1884.

Hon. S. L. Withey, Grand Rapids.

D. SIR: The accompanying bill of exceptions in Maas *et al vs.* Hanna *et al.* is satisfactory to us.

Very resp'y, M. H. MAYNARD.

I have examined the bill and find it correct, though I do not think the form of it is as good as it might be.

D. H. BALL.

33 The Circuit Court of the United States for the Western District of Michigan, Northern Division.

JOHN B. MAAS & NICHOLAS LONSTORF

vs.

MARCUS A. HANNA, Impleaded with ROBERT R. RHODES and JAMES F. RHODES.

Be it remembered that at the May term of the circuit court

of the United States for the northern division of the western district of Michigan, held at Marquette, in said district, on the seventeenth day of July, A. D. 1883, before Hon. Solomon L. Withey, district judge, presiding, the above-entitled cause was tried to a jury, and the plaintiffs, to maintain and prove the issues on their part, called as witnesses on their part Peter White, John B. Maas, and Richard Blake, who, being sworn, testified, as is fully set forth in Exhibit "A," hereto attached and made a part hereof, together with such admissions as were made by counsel and used at said trial during the taking of such testimony-in-chief, all of which appear in said exhibit. Plaintiffs also offered in evidence the several papers attached to said Exhibit A and therein referred to, marked as therein stated; also the depositions of Marcus A. Hanna, one of the defendants, taken in another action—one in 1875 and another in 1878, with the letters and statements thereto attached and marked as therein set forth.

Thereupon the plaintiffs rested their case.

And the defendant, to maintain and prove the issue on his part, called as witnesses M. A. Hanna, Peter White, and M. H. Maynard, who, being duly sworn, testified as set forth in the same Exhibit A; also read the depositions of W. U. Masters and Thomas Maher, which are hereto attached, and the abstract of statement made by the witness Maynard, hereto attached, and rested.

And thereupon the plaintiffs, in rebuttal, called Samuel Mitchell Peter White, John B. Maas, and Nicholas Lonstorf as witnesses, who each testified as shown by the same Exhibit A, and offered the several letters and papers therein referred to and thereto attached, marked as therein set forth, and rested.

And neither party having offered or given further testimony the cause was argued by counsel; and thereupon the court charged the jury as set forth in the annexed exhibit, marked "charge," and refused to charge as therein set forth; to which charges and refusals to charge the defendant at the time excepted, as set forth in said exhibit; and thereupon, after verdict and within the time fixed by the court, the defendant filed his motion for a new trial, which was heard and overruled by the court; to which ruling the defendant at the time excepted, and the court entered judgment upon the said verdict.

Thereupon the defendant requested the court to sign and seal this his bill of exceptions, which is here accordingly done within the time limited by the court.

S. L. WITHEY,
Dist. Judge.

34 EXHIBIT A.

In the Circuit Court of the United States for the Western District of Michigan, Northern Division.

JOHN B MAAS, NICHOLAS LONSTORF, & JOHN P. MITCHELL
vs.
MARCUS A. HANNA, ROBERT R. RHODES, & JAMES F. RHODES.

JULY 17, 1883.

Present: Hon. S. L. Withey, district judge, and a jury.
For plaintiffs, Dan. H. Ball; for defendants, M. H. Maynard.

Mr. BALL: Is there any necessity of putting us to proof of the lien on the iron?

Mr. MAYNARD: I don't wish to put you to the necessity of proving anything that is true. We don't know anything about it. We can't dispute anything that you offer on the subject of the lien. We will admit that all the iron that was shipped by White was subject to a lien in favor of Maas, Lonstorf & Mitchell and the bank—I don't know which was which—at twenty dollars a ton, with interest at ten per cent. That it was, as a matter of fact, subject to that lien, and it was known to Mr. White when he shipped it.

Mr. BALL: I have a written instrument, executed by the president and directors of the Iron Bank of Negaunee, showing a transfer of these claims to Maas, Lonstorf & Mitchell, as the Iron Bank succeeded the First National Bank.

Mr. MAYNARD. We don't dispute that. The assignment is conceded.

35 PETER WHITE, a witness produced, sworn, and examined on the part of the plaintiff, was examined-in-chief by Mr. BALL, and testified as follows:

Q. You have resided in Marquette quite a number of years?
A. Yes, sir.
Q. What has been your business the last 15 years or more?
A. Banker, principally.
Q. Are you acquainted with the plaintiffs in the case, Maas and Lonstorf, and were you acquainted with Mitchell?
A. I am and was.
Q. Are you acquainted with the firm of Rhodes & Co., of Cleveland?
A. Yes, sir.
Q. Did you have any iron in your hands in the summer of 1874 upon which you held a claim manufactured by the Michigan Iron Co?
A. I did.
Q. Will you state whether you made any arrangement with the firm of Rhodes & Co. for the shipment of that iron to them?
A. I did make such an arrangement.
Q. Was it iron that belonged to yourself, or did you have a lien upon it?

A. I had a lien upon it; it was Michigan Iron Co.'s iron.

Q. Who did you make the arrangements with on the part of the defendants?

A. Mr. Hanna.

Q. What was the arrangement? State what was said between you.

Mr. MAYNARD: Was the arrangement in writing?

A. It was.

Mr. MAYNARD: I have the paper—the original; it fell into my hands after the last trial.

Mr. BALL: Very well. Is that the arrangement which you held?

A. Yes, sir; that is it.

36 Mr. BALL: I will offer that in evidence.

Paper referred to offered in evidence and marked "Ex. B."

Q. What was the conversation you had with Mr. Hanna prior to making that memorandum?

Objected to as immaterial.

COURT: Confine yourself to conversation that will not be in contradiction to the written instrument.

Mr. BALL: I want to ask you whether there was any agreement or understanding between you as to the manner in which these advances were to be made and upon what kind of paper the advances were to be made, if any?

Objected to as immaterial. Objection overruled.

A. It was arranged that the paper of the Michigan Iron Co. at that rate, twenty-five dollars and twenty-five cents, with interest, at four months, should be put into a principal—in a note—payable four months after date to their own order and sent with my sight draft for the amount, at the rate of $25 per ton.

Q. Your draft was to be paid out of what?

A. The discount of the Michigan Iron Co.'s note at 10 per cent. would just net the amount to pay my draft.

Q. Was anything said between you and Mr. Hanna in regard to giving your own paper for the amount of money they were to advance?

A. I don't think there was. I have no recollection now of any such conversation.

Q. Under what circumstances was this addition—of the additional 1,000 tons and two dollars and twenty-five cents?

A. A messenger came to me and said that my presence was desired in the office of the Michigan Iron Co. I went up there and I found quite a number of people present, and I was told
37 that such an arrangement had been entered into; that certain iron which other parties held was to be shipped in my name; that they had agreed to do it if I would assume the care of it.

Q. Was it stated who those parties were?

A. Yes, sir; Maas, Lonstorf, & Mitchell, and the First National Bank of Negaunee.

Q. Who was there at the time you went to the Michigan Iron Co.'s office?

A. My own recollection is that Mr. Hanna, Mr. Ripka, Mr Blake, the secretary of the company, Mr. Breitung, one of the directors, and Mr. Wetmore, another director, and Mr. Maas, and one or two others. Mr. Maas has always denied that he was there.

Q. Your recollection, you say, is that he was there?

A. He was either there or else I saw him outside. I know I had his consent.

Q. I think you said it was stated there that it was their iron that was to be shipped—that is, iron that they had a lien upon?

A. Yes, sir.

Q. It was to be sent forward in your name under the same arrangement that you had with them?

A. Under that supplementary clause there.

Q. Was that at the time that this was made?

A. The same day, in the afternoon; it is dated August, 22; it was made in the forenoon, the first part of it, and then this addition was made in the afternoon in the office of the Michigan Iron Co.

Q. How did that come to be added to the paper?

A. I was informed by some one, I don't remember which of the parties present, that such an arrangement had been entered into. I asked that it be added to that paper, and it was so added.

Q. It was added right there at that time, was it?

A. Yes, sir.

38 Q. Did you attend to the shipment of pig-iron to Rhodes & Co.?

A. I did.

Q. This iron of the First National Bank and Maas, Lonstorf & Mitchell?

A. Yes, sir.

Q. Did you forward to them the paper of the Michigan Iron Co. according to your arrangement?

A. Up to a certain time, I did.

Q. Well, for all the money that you drew?

A. For all that I drew for, I sent that.

Q. You forwarded four months' paper of the Michigan Iron Co. and drew against the proceeds?

A. Yes, sir.

Q. I have a statement here that was made by you; I would like to have you examine it and refresh your memory and see if you can tell us what shipments of iron were made by you that belonged to Maas, Lonstorf & Mitchell and the First National Bank—that is, those on which they had a lien.

Mr. MAYNARD: Do you propose to follow that up by proof that we knew anything about that?

Mr. BALL: Yes, sir.

Mr. MAYNARD: I object to it unless it is followed by such proof.

A. The first shipment was the same day of the agreement, August, 22.

Q. State whether that statement made by you is a correct statement of the iron shipped for the First National Bank of Negaunee and Maas, Lonstorf & Mitchell.

A. It is.

Mr. BALL: There will probably be no objection to putting that in as a statement of part of his testimony. I don't care for what follows; I mean just the statement of iron that was shipped on their account. We can then compare that with Mr. Rhodes' statement of iron that was received and show which belonged to the plaintiffs, and then we shall show that they were notified of the fact.

39 Statement last referred to marked "Ex. C."

Q. I asked you whether there was any agreement or understanding between you and Rhodes & Co. that you or the parties you represented were to be responsible for any deficiency there might be in the proceeds of the iron—that is, if it should fall short of the amount advanced upon it?

Mr. MAYNARD: That is objected to as being immaterial.

COURT: You are anticipating what their defence is. You had better wait on this branch of it until they have made their defence.

Cross-examination by Mr. MAYNARD:

Q. Mr. White, the arrangement you had with Mr. Hanna is expressed in this written proposition made by him and accepted by you and the parties he represented, signed by Rhodes & Co., on the 22nd of August, 1874, as I understand?

A. I suppose so.

Q. And the iron that was shipped to Rhodes & Co., and all of it through you, was it not?

A. Yes, sir.

Q. And was shipped upon this arrangement that you had made, and which is expressed in this written proposition accepted by you and by the other parties?

A. Yes, sir.

Q. You knew Rhodes & Co. were commission men residing in Cleveland, and the iron was shipped to them to be sold on commission, was it not?

A. I suppose so; yes, sir.

Q. Do you recollect when the first shipment was made? You say the 22nd of August.

A. The same day the agreement was made; the first shipment was ten pounds less than ten tons.

Q. Was there any delay in the shipment of the iron con-
40 templated under this written proposition to be shipped?

A. Well, some of it was not shipped as soon as I expected to ship it—the last end of it.

Q. Was all of the iron in fact made and in the hands of the plain-

tiffs in this action and yourself that was shipped to Rhodes & Co.; was it at that time manufactured?

A. I supposed it was.

Objected to as immaterial and withdrawn.

Q. Do you remember about when the last shipment was made?

A. Some day in November, 1874.

Q. Under the proposition as made what was or what would have been a reasonable time within which the iron should have been shipped, as contemplated by the parties, by this proposition?

A. I hardly know.

Q. The proposition was made on the 22d of August; about when, reasonably, should the iron have been shipped, if you are able to state?

A. We intended to ship it as fast as we could get boats to take it.

Q. Was there any delay on account of not getting boats or vessels by which to ship it?

A. Sometimes there was some delay; there *was* no boats to take it at the rate we were willing to pay.

Q. In the shipment of this iron you were acting by the consent and agreement of the parties, in behalf of yourself, or the right which you represented, and also the right or interest which the First National Bank of Negaunee and the plaintiffs in this action had or claimed upon the property, as well as the Michigan Iron Co., I take it?

A. Yes, sir.

41 Redirect examination by Mr. BALL:

Q. You say that you supposed the iron was sent to be sold on commission; were they to sell this iron upon commission for you or for the general owner of the iron?

A. Well, for the general owner of the iron, I should suppose.

The COURT: That is involved in what he has already stated.

Q. For whom was the iron to be sold by Rhodes & Co.; for the lienholders or for the general owners, the Michigan Iron Company?

The COURT: I think he did answer for the owners.

A. Yes; that is what I supposed—the general owners of the iron.

Q. In any conversation that you have ever had with the defendants in regard to their failure to advance this amount of money on all the iron that was shipped, was any objection ever made to you because it had not been shipped within the time that they expected it?

A. Not that I recollect of?

Q. Have you ever received any communication of that kind by letter?

A. I think not.

Recross-examination by Mr. MAYNARD:

Q. Mr. White, let me refresh your recollection in regard to that.

You testified in a case in which you was defendant in a suit brought by these same parties and you have a copy of your testimony taken at that time?

A. Yes, sir.

Q. Look on the 12th page of your testimony and see what you testified to at that time.

Witness refers to testimony.

42 Q. Did you not testify there that they claimed the iron did not come down in time; that you so informed the plaintiffs when they asked you for a draft against this iron?

A. It seems I did; I had forgotten it.

Q. Does that refresh your recollection at all as to any claim that Rhodes & Co. made upon that subject?

A. I think it does; I think they did make such a claim among other claims.

Redirect examination by Mr. BALL:

Q. You say that they did?

A. I think at one time, among many objections that Mr. Hanna put forward, that was one objection; I did not consider it anything at the time, but Mr. Hanna said he had made a contract to place a certain quantity of this iron and he could not get it in time to fill that contract.

Q. When was it that he told you that?

A. Well, it is a long time to remember such things—it is nine years ago.

Q. I mean was it after the iron had all been shipped?

A. I think it was after the iron had all been shipped—the fall or winter some time.

Q. Then I will ask you did they ever notify you on account of time having elapsed that they could not receive any more iron under that arrangement or object to receiving any more iron on that arrangement on that ground—lapse of time?

A. At one period before the iron was all shipped I think Mr. Hanna telegraphed me that they would not take any more iron.

Q. Was that the reason—that the time had elapsed; that it did not come down as quick as it ought to?

A. No; I think that related to the quality; I am not sure about it; my recollection is that it was in regard to quality.

Mr. MAYNARD, showing witness a telegram: Is that the telegram you refer to?

A. Well, I never saw that telegram before; the telegram that I refer to came direct to me; that is to A. A. Ripka.

43 Q. The memorandum at the bottom says "Sent to P. W.;" do you remember whether that is it?

A. I did not read it (looking at the telegram); to the best of my recollection, that was the language of it.

Recross-examination by Mr. MAYNARD:

Q. You said, Mr. White, that you thought these objections were made some time in the winter—the objections as to time. If you refer to your testimony you will be able to refresh your recollection on that subject. You testified there that they asked you for a draft against this iron in December, and that you told them then that that objection had been made.

A. Well, December is winter.

Q. Well, December is late in the fall up here. Can you fix the time when they made that objection—that the iron was so late in coming down that they were disappointed?

A. I cannot.

Q. Didn't you testify there that you told Maas & Lonstorf in December that they had made that objection?

A. I remember of telling them, but I don't remember of telling the time.

Q. If that is true, that you did tell them in December that they had made that objection, then the objection must have been made either in December or prior?

A. I don't find it.

Q. Don't you find that you told them so?

A. I so read it.

The COURT: That doesn't tend to contradict what he said. He said it was in the winter.

MR. MAYNARD: I know, but I would like to fix it early in the winter.

A. I stated that it was late in December when they applied to me for a draft, and I gave them the reasons why I thought a draft would not be desirable.

Q. It was before that, then, that you had received their objections to it?

A. Yes, sir.

41 Redirect examination by Mr. BALL:

I asked Mr. White some questions in regard to what took place between himself and Mr. Hanna, and he didn't seem to remember. I would like to refresh his memory also by former testimony that he has given. I asked him whether Mr. Hanna asked Mr. White to give his paper for the money advanced, and what he said on that subject, and he said he didn't remember. Now, I have his testimony on that subject before.

Mr. MAYNARD: I don't see how that is material.

Q. I will ask you now whether you have any recollection of anything further that passed between you and Mr. Hanna on the subject of your paper or your liability?

Mr. MAYNARD: I object.

The COURT: Well, Mr. White has already testified that that contract states the transaction between him and the defendants in re-

gard to that, and that is for an advance of money, which would not indicate that it was a loan; if they undertake to show any such transaction you are entitled to rebut it, because it is not necessarily a part of your case. On the face of the instrument it is that the defendants were to advance him $22.25 per ton, and that don't mean a loan.

45 Mr. BALL: I propose to offer in evidence now a deposition of Mr. Hanna, one of the defendants, to show the iron actually received by Rhodes & Co. in Cleveland. There are two depositions, in fact, taken in another case, and I offer them as an admission of one of the defendants, showing the actual shipments of iron or the receipts of iron by Rhodes & Co., and also correspondence between Rhodes & Co. and Mr. White on the subject.

I first offer in evidence the deposition of Marcus A. Hanna, taken in the circuit court for Marquette county, in 1876, showing a statement of receipts of pig-iron shipped by Mr. White. I will not read it; I will refer to it hereafter.

Mr MAYNARD: What parts of the deposition do you offer?

Mr. BALL: I offer all statements of receipts of pig metal, together with Mr. Hanna's statements, which are contained in the deposition; that is his testimony which says that the iron was received.

Mr. MAYNARD: You offer the statements, together with his testimony that it is correct.

Mr. BALL: Yes, sir. There a copies of letters annexed to the deposition, received from Mr. White, that he testifies to having received. Said deposition with the copies of letters annexed is hereto annexed, marked "Exhibit D."

Then in connection I offer the other deposition. I will read the letters which I offer in evidence.

I also offer the deposition of Mr. Hanna, taken in the same case at a later date, July 17, 1878, in the city of Cleveland, and containing an account of sales and account current of the Michigan pig iron. The account is headed "Michigan Iron Company in account with Rhodes & Co;" and also containing copies of letters written by Rhodes & Co. to Peter White. I offer the letters in evidence in the order in which they come, one after the other. Deposition with copies of letters annexed is hereto annexed, marked "Exhibit E."

46 Counsel for plaintiffs reads in evidence the following letters which are attached to the depositions above referred to:

From Peter White to Rhodes & Co., August 30, 1874 (marked "Exhibit F").

From Peter White to Rhodes & Co., September 3, 1874 (marked "Exhibit G").

From Rhodes & Co. to Peter White, September 14, 1874 (marked "Exhibit J").

From Rodes & Co. to Peter White, September 15, 1874 (marked "Exhibit H").

Mr. BALL: I think we called upon you to produce the original letter written by Mr. White to Rhodes & Co., September 10th?

Mr. MAYNARD: We haven't it. That was put in from Mr. White's letter book before.

Mr. BALL: I have a copy here that was made by Mr. Fay. Will you admit it as it is?

Mr. MAYNARD: The letter was written by Mr. White's clerk. I don't know what he would testify to about it. He is not here. Mr. Hanna says he never saw the letter.

COURT: If you object they must take the regular course.

Mr. BALL: Do you object to this copy being introduced, or not?

Mr. MAYNARD: No, we will not object.

COURT: Very well let it be read.

Mr. MAYNARD: It comes in to this extent; that such a letter appears to have been written in Mr. White's letter-book. It is no evidence that we ever received it. That is all you can show if you had the letter-book here.

Copy of the letter refered to, dated September 10, 1874, from Peter White to Rhodes & Co., read in evidence by plaintiffs'
47 attorney, and marked "Exhibit K."

Plaintiffs' counsel also read in evidence letter from Rhodes & Co. to Peter White, dated September 14, 1874 (marked "Exhibit F").

Also letter from Peter White to Rhodes & Co., dated September 16, 1874 (marked "Exhibit L").

(Court here took a recess until 2 o'clock p. m.)

Afternoon session.

Counsel for plaintiffs read in evidence copy of a letter from Rhodes & Co. to Peter White, dated September 21, 1874 (marked "Exhibit M").

Mr. BALL: In this connection, will it be admitted that Mr. Ripka was agent of the Michigan Iron Co.?

Mr. MAYNARD: Yes, sir.

Counsel for plaintiffs read in evidence a copy of a telegram from Rhodes & Co. to Peter White, dated September 21, 1874 (marked "Exhibit N").

Also a letter from Peter White to Rhodes & Co., dated October 24, 1874 (marked "Exhibit O").

Also from Rhodes & Co. to Peter White, dated October 28, 1874 (marked "Exhibit P").

Also letter from Peter White to Rhodes & Co., dated November 3, 1874 (marked "Exhibit Q").

Also letter from Peter White to Rhodes & Co., dated January 8, 1875 (marked "Exhibit R").

Also letter from Rhodes & Co. to Peter White, dated January 12, 1875 (marked "Exhibit S").

48 Also, in connection with the deposition of Marcus A. Hanna the statement of sales of pig-iron (marked "Exhibit T").

Also a subsequent account of sales rendered by Rhodes & Co., showing a sale of iron for $615.76, dated July 28, 1879 (marked "Exhibit U").

JOHN B. MAAS, one of the plaintiffs, having been duly sworn on behalf of the plaintiffs, was examined in chief by Mr. BALL, and testified as follows:

Q. Mr. Maas, you are one of the plaintiffs in this case, are you?

A. Yes, sir.

Q. What connection did you have with the First National Bank of Negaunee in the summer and fall of 1874?

A. I was president of the bank.

Q. Did you manage its affairs?

A. Yes, sir.

Q. And you were also connected with Maas, Lonstorf & Mitchell in this iron matter, were you?

A. Yes, sir.

Q. I have some notes here which I will introduce in evidence. I will ask Mr. Maas whether these were the notes on which the lien rested, and also some bank notes.

Mr. MAYNARD: Of course, we know nothing about it, but whatever you prove we are at your mercy in that respect altogether.

Q. (Showing witness papers.) I will show you these notes. You can see what they are. There are four or five, I have forgotten which. They are notes of the Michigan Iron Co., given to Maas, Lonstorf & Mitchell.

A. Yes, sir.

Q. Did these notes represent the indebtedness of the Michigan Iron Co. upon which your lien on the iron was based?

A. Yes, sir; it is stated in them notes.

49 Counsel for plaintiffs offered in evidence the five notes referred to given by the Michigan Iron Co. to Maas, Lonstorf & Mitchell—

One dated June 22, 1874, at 4 months, $2,000, drawing ten per cent. interest after maturity (marked "Exhibit Q").

One dated June 17, 1874, at 4 months, $2,000, with interest at 10 per cent. after maturity (marked "Exhibit R").

One dated July 1, 1874, at 4 months, $4,000, with interest at 10 per cent. after maturity (marked "Exhibit S").

One dated June 27, 1874, $3,000, at 4 months, interest at 10 per cent. after maturity (marked "Exhibit T").

One dated June 20, 1874, at 4 months, $1,000, interest at 10 per cent. after maturity (marked "Exhibit U").

Q. (Showing witness papers.) Examine these notes also and say what they are.

A. These are the notes of the First National Bank of Negaunee.

Counsel for plaintiffs offered in evidence three notes given by the Michigan Iron Co. to the First National Bank of Negaunee:

One dated May 29, 1874, 90 days after date, $5,000, with interest at 10 per cent. per annum after maturity (marked "Exhibit V").

One dated July 5, 1874, 3 months, one thousand dollars, with interest at 10 per cent. per annum after maturity (marked "Exhibit W").

One dated April 15, 1874, 4 months, $7,621.36, with interest at 10 per cent. per annum after security (marked "Exhibit X").

Q. Who was H. E. Hayden; what connection did he have with the bank?

A. He was president before.

Q. The fore part of that same season?

A. Yes, sir; that first note was made under his presidency of the bank.

50 Q. You succeeded him as president of the bank?

A. Yes, sir.

Q. State whether part of that iron that you held your lien on was put up to secure this first note as well as these others.

A. The part that was to secure the first note was put on the Cleveland, or Spear's, dock at the time they took the note.

Q. This iron that you held your lien on was to secure these as well as others, was it?

A. Yes, sir.

Q. Had it been delivered to you?

A. There was another note, similar to that, that was given up to Mr. White at the time the first payment was made; the balance was endorsed on that note.

Q. You heard Mr. White's testimony in regard to the arrangement to ship this iron that you had a lien on?

A. Yes, sir.

Q. State whether you received any advances or any money on that iron that you shipped or that he shipped for you.

A. Yes, sir; we received two payments on it—that is, one from Mr. White and the next was from Rhodes & Co.

Q. I am speaking now about what you received as advances when the iron got in Cleveland.

A. We received, first, $12,000 and some odd dollars.

Q. That was applied on which paper?

A. That was applied on the bank paper.

Q. In regard to this arrangement with Mr. White; state whether you understood the arrangement at the time that the iron was to be shipped by him for you?

A. That is what I understood at the time. He had an understanding or a written contract with Rhodes & Co. to ship the iron to them and get an advance of so much for it.

Q. Mr. White stated to you the contract that he had made with Rhodes & Co., I suppose?

A. Yes, sir.

51 Q. And you consented to his shipping your iron under that contract?

A. Yes, sir.

Q. And also that of the bank?

A. Yes, sir.

Q. After you had got that first advance of twelve thousand and odd dollars, did you apply for any further advance to anybody?

A. I applied only to Mr. White about it.

Q. You say you didn't receive any further advances on it?

A. Not from Mr. White.

Q. Did you have any communication with Rhodes & Co. on the subject?

A. Yes, sir.

Q. In what way. Did you write any letter or have any letter written to them for the bank or for yourself?

A. I don't know whether I wrote any letter myself, but it was written to them, either by the cashier of the bank or Mr. Lonstorf, I could not tell which.

Q. Did you get a reply from them in regard to it as to what they claimed the condition of the iron was?

A. Well, I don't recollect. I got an answer, but I can't recollect what the answer was, it is so long.

Mr. BALL: I might as well offer in this connection this letter from Rhodes & Co., dated June 4, 1875.

Mr. MAYNARD: We should ask to have the letter to which it is a reply.

Mr. BALL: It is complete in itself. It is evidently in answer to a letter that was written asking for information.

Mr. MAYNARD: All right, go on, read it. I have no doubt about that.

Letter referred to read in evidence and marked "Exhibit V."

Q. Who was F. P. Snow?

A. He was cashier of the bank at the time.

52 Q. Did you go and see Mr. White about that afterwards?

A. Yes, sir

Q. Did you get a line from him to Rhodes & Co. stating your interest in the iron?

A. I think we did?

Q. (Showing witness a paper.) This is the order that Mr. White gave to you?

A. Yes, sir.

Plaintiffs' counsel read in evidence the order referred to, dated June 8, 1875 (marked "Exhibit W").

Q. Did you go to Cleveland and call upon Rhodes & Co.?

A. Yes, sir.

Q. Did you take this letter with you?

A. Yes, sir.

Q. What did you do?

A. Well, I went to Rhodes & Co.'s office and produced this order and wanted to get settled up, and they told me that there was so much claim on it that I wouldn't want to settle. There was more claim on it than we received—that is, they claimed they advanced more money than we received.

Mr. MAYNARD: They claimed a greater advance on it than you were willing to allow?

A. They claimed there was so much advanced on it that I wouldn't settle on those advances.

Q. They allowed you had 1,014 tons there and there was that amount there?

A. That is what they claim, there was so much pig-iron there.

Q. They claimed this fourteen thousand and odd dollars lien upon it besides their charges?

A. Yes, sir.

Q. Did you request them to turn that iron over to you—that is, your iron?

A. No, I didn't request it because we only had a claim on 880-odd tons.

Q. What did you say to them about the 884 tons?

A. Well, we wanted to get our advance out of it; that is all we expected to get.

53 Q. You asked to have the iron transferred to your account?

A. Yes, sir; that was the order for the transfer.

Q. Well, you say they claimed that they had made these advances upon all the iron; did you state to them what Mr. White told you about it?

A. I don't understand what you mean.

Q. Did you state to them what Mr. White had told you in regard to whether they had made advances on that iron of yours or not?

A. I think I told them Mr. White says he never received a cent of advance on that iron.

Q. On that iron of yours, you mean?

A. Yes, sir.

Q. Did you have a statement in the shape of an affidavit that was made by Mr. White on the back of the letter?

A. I did.

A. Did you show it to them?

A. Yes, sir; I read it to them.

Q. What did they say about it?

A. I don't recollect what they said.

Q. Well, did they admit that it was correct or not?

A. I don't recollect what was said about it.

Q. Did they still refuse to turn over the iron to you except subject to that advance that they claimed?

A. Yes, sir; they would not turn the iron over except we accepted their claim on those advances.

Mr. Ball: I propose to offer in evidence this statement which he says he showed to Rhodes & Co. This is not testimony. It is simply a part of the conversation that took place between Mr. Maas and Rhodes & Co.

Court: It amounts simply to this—the claim the witness made for the iron. For that purpose it is admissible.

The order referred to, dated June 8, 1875, and affidavit attached read in evidence and marked "Exhibit W."

54 They have since that time, you say, sold and paid over to you some of the proceeds of the iron?

A. Yes, sir.

Q. Have you examined any further to make up your mind whether that last $591 was finally paid or not?

A. I don't think it was; not that I know of. The draft was sent forward and returned.

Q. What sums of money have you received?

A. I don't recollect exactly, but at one time we received ten thousand and some odd dollars, and the last time I think it was thirty-six hundred and some odd dollars; I can't tell the exact amount.

Q. That is all unless the $591?

A. Well, I don't think—at least I don't know—nothing about that. I know the draft came forward and they wanted a receipt in full and that we refused to give. That is the reason it was sent back, and if it came back and was paid I don't know nothing about it.

55 Cross-examination by Mr. MAYNARD:

Q. I understand you say you received twelve thousand and odd dollars?

A. Yes, sir.

Q. That was on the bank iron?

A. That was on the bank iron.

Q. You don't remember how much it was exactly?

A. I don't remember exactly; it was twelve thousand and some odd dollars.

Q. Was it $12,358.12?

A. We did not get that amount; Mr. White, I suppose, kept back something for insurance, &c.

Q. Then you say you received ten thousand and some odd dollars?

A. Yes; it may be ten thousand or ten thousand and some odd.

Q. It was just ten thousand, wasn't it?

A. That may be.

Q. Do you know when you received it?

A. I could not tell.

Q. (Showing witness a paper.) See if that will refresh your recollection.

A. That is Mr. Lonstorf's writing. I suppose that is right.

Q. That is it, isn't it, June 29, 1877?

A. Yes, sir; that is in Mr. Lonstorf's writing.

Q. Then you think you received thirty-six hundred and some odd dollars?

A. I think so.

Q. (Showing witness a paper.) State if that will aid you to state how much it was—that is it, isn't it?

A. I don't know; it may be. I was not there when this transaction was done; John P. Mitchell received that.

Q. It was received on this iron was it?

A. I suppose it was; that would be on the bank iron.

Q. December 2, 1878, $3,834.26?

A. That money was paid when I was not connected with the bank any more.

Q. (Showing witness a paper.) Mr. Maas, who wrote that letter?
A. That is Mr. Lonstorf's writing. I had very little correspondence personally.
56 Q. (Showing witness a paper.) There is a letter which you wrote.
A. That is my writing.
Q. (Showing witness a paper.) Did you ever see the letter of which that is a copy?
A. I don't know whether I did or not. Mr. Lonstorf done most of the correspondence, but I think that was a letter I have seen.
Q. You think you did see a letter like that?
A. Yes, sir.
Q. Wasn't there a draft with it for $500?
A. There was a draft with it.

Mr. MAYNARD: I offer these letters in evidence.

The first letter is dated August 1, 1879. The witness says the letter was written by his partner, Mr. Lonstorf, addressed to Rhodes & Co., signed Maas & Lonstorf.

The letter referred to read in evidence by defendants' counsel and marked Def'ts' "Exhibit 1."

WITNESS: Do you mean the letter you have just read?

Q. I asked you if you ever saw the letter of which this is a copy?
A. That letter which you have just been reading is what I had reference to.

The witness is shown letter dated August 4, 1879.

WITNESS: I don't know whether I did or not. I may have seen it, but I would not swear to it neither way, it is so long back. I I don't recollect that we ever kept the $500. My recollection was that the $500 draft, or whatever it was, was sent back "not accepted."
Q. Now, Mr. Maas, did you see Mr. Hanna in 1874, when this contract was made?
A. Not when the contract was made.
Q. Did you have any conversation with him that summer—in August, 1874?
A. I didn't ever know Mr. Hanna until I went to Cleve-
57 land. I think that was in the beginning of the year 1875; that is the first time I knew him.
Q. Then this iron of yours, that you have been testifying about, was shipped by Peter White as your agent?
A. That is what I supposed at the time.
Q. Did you authorize him to ship it?
A. Between him and Mr. Ripka; he came and wanted to ship the iron away so they could bring it in market. Our notes were not due at the time, but we were satisfied.
Q. There was nothing due you at that time on your notes, was there?

A. Not when the first part of the iron was shipped; I don't think there was, except the bank iron.

Q. Well, the notes will show for themselves whether there was anything due on them August 22. When did you first see Mr. Hanna; you said in the early part of 1875?

A. Yes, sir.

Q. Then it was before you went there with that letter?

A. No; that was the time when I went there with the letter.

Q. Well, that was in June?

A. Oh, no; that was in midwinter.

Q. Well, that letter is dated June 8?

A. Well, then, there was another one, then; I think it was in midwinter.

Q. Did you ever take that letter to Mr. Hanna?

A. I think I did, sir.

Q. Well, when?

A. Well, I don't know if it was that letter or which letter it was. I took a letter to Mr. Hanna the time when I went there to see about it.

Q. In the winter?

A. Yes, sir.

Q. Have you got that letter now?

A. Well, I don't know; I suppose that letter is there with the order to transfer the iron over to us; we only made our loan in June, 1874.

58 Q. Then you first saw Mr. Hanna in midwinter of 1874 and '75?

A. Yes, sir.

Q. And you then had some letter, did you, with you?

A. I had an order from Mr. White.

Q. You didn't have that order?

A. I think I had that order.

Q. Well, that order is dated June 8, 1875.

A. Is it?

Q. Yes.

A. Well, then, there was some other letter about it.

Mr. HALL: It bears that date. I always had an idea it was earlier. Probably he refers to this certificate.

Mr. HELEY: There was another letter that he gave back to Mr. White afterwards.

WITNESS: Oh, yes.

Q. Do you remember that to be the fact?

A. I think that was the letter. I know the first time I was in there, I think, was in January, 1875, when I first knew Mr. Hanna.

Q. What was that interview; what conversation did you have at that time?

A. I don't recollect what conversation we had; we talked about the iron, to get the advance or get the money out of the iron.

Q. Did you have anything from Mr. White to show that you were entitled to it?

A. I think I did.

Q. Do you know whether you had or not?

A. I must have had or else I would not have gone to Rhodes & Co. for it.

The witness is shown a printed exhibit in the bill of exceptions in the case of Maas, Lonstorf & Mitchell against Peter White, and says "Yes, I had such a letter."

Q. Did you have that with you at that time?

A. That may be—very likely—the letter that I went with first.

Q. Are you willing to testify that you had that document?

59 A. I had something to show that Peter White stated that the iron belonged to us.

Q. But you can't tell whether that is it or something else?

A. Well, I couldn't swear if that is the exact copy or not. It is 7 or 8 years ago now, but it was something similar. It was an order or letter to show to Rhodes & Co. that we were the owners of the iron. I think he had a second lien on the iron—anything above our claim.

Q. The paper that you had at that time stated that?

A. I think that was the paper, but I would not swear that it was it; but we had such a paper from him. I must have had an order from Mr. White about the iron to Rhodes & Co. or else I would not have gone there for it.

RICHARD BLAKE, a witness produced, sworn, and examined on the part of the plaintiffs, — examined in chief by Mr. BALL, and testified as follows:

Q. I will show you a computation that you have made; will you state what it is?

A. This first is taken from the way-bills of shipments of iron to the credit of different people.

Q. Shipments of iron by whom and to whom?

A. From Maas, Lonstorf & Mitchell, Peter White, and Samuel Schoch to Rhodas & Co.

Q. That is, of the Michigan Iron Co.?

A. Yes, sir.

Q. Where did you get those figures from?

A. From the deposition of Mr. Hanna, I think it was.

Q. Then you figured up what first?

60 A. I figured up the total amount of the iron shipped and the proceeds and the amount it gave per ton.

Q. You found the entire amount of iron shipped for all parties?

A. Yes, sir; 2,277 tons and 250 pounds.

Q. How many tons of that is the Maas, Lonstorf & Mitchell iron?

A. 1388 tons and 2216 pounds.

Q. How much of Peter White?

A. 614 tons and 1414 pounds.

Q. How much the Samuel Schoch?

A. 273 tons and 1100 pounds.

Q. Then did you take from the deposition of Mr. Hanna the account of the sales of that iron?

A. Yes, sir.

Q. And also deducting from it all expenses and commissions which he charges against it?

A. Yes, sir.

Q. How did you divide those proceeds between the several parties?

A. I added up the total amount of tons of iron and gave each party their *pro rata* share, according to the number of tons shipped.

Q. Of the money received for the iron?

A. Yes, sir.

Q. Have you computed the interest upon the net proceeds as shown by that deposition?

A. The last interest I computed; the rest was taken from Rhodes and Co.'s statement.

Q. What do you mean by the last interest?

A. Down here at the bottom—from December 31, 1877.

Q. Computed at what rate?

A. Six per cent.

Q. Up to what time did you compute the interest due?

A. Up to to-day.

Q. What amount does it show?

A. The balance due, interest and all?

Q. Yes, sir.

A. $9,259.61.

Q. That is on the basis of actual sales according to his report?

A. Yes, sir.

61 Mr. BALL: I offer this computation in evidence in connection with the testimony of Mr. Blake.

Mr. MAYNARD: I object to it as it is not the proper basis of computation.

The computations referred to were considered, read, and marked Exhibits X and Y, respectively.

62 PETER WHITE recalled for the plaintiffs.

Examined by Mr. BALL:

Q. In some of these various statements there appears to have been some iron shipped to account of S. Schoch. Did you have anything to do with the Schoch iron?

A. Nothing whatever.

Q. Did that come under your arrangement with Rhodes & Co.?

A. I don't know anything about that, except as they told me.

Plaintiffs rest.

63 MARCUS A. HANNA, a witness produced, sworn, and examined on the part of the defendants, — examined in chief by Mr. MAYNARD, and testified as follows:

Q. After your visit here in 1874, about which there has been some testimony, what time did you return to Cleveland?

A. About the 10th of September.

Q. You are a member of the firm of Rhodes & Co.?

A. Yes, sir.

Q. What is your business—the business of the firm—the defendants?

A. Commission merchants for the sale of pig-iron and ore.

Q. How long had you been acquainted with Mr. White before this time?

A. Well, a good many years.

Q. Had you handled his iron on commission?

A. Yes, sir.

Q. How long?

A. I should say ten years, probably; nearly that; more or less.

Q. How long has your firm been in business in Cleveland as commission merchants?

A. The present firm since 1867, the old firm a good deal longer.

Q. You say you reached Cleveland about the 10th of September?

A. Yes, sir.

Q. What did you find when you reached there?

A. In reference to this consignment of iron?

Q. Yes, sir.

A. I found that 3 or 4 cargoes or shipments of iron had already arrived at our yard and was in store, and I looked at the quality of it; a portion of it wasn't according to the sample that I had seen here.

Mr. BALL: I object to any testimony in regard to the comparison of quality with sample. We have no contract that calls for
64 anything except Michigan iron, and the most that can be claimed is that it should be iron that is merchantable.

Q. I will ask him a few other questions first, before I reach that. Had you known the iron called "Michigan charcoal iron" in Cleveland before this contract was made?

A. Yes, sir; it was a standard brand of iron well known in the market; sold every year.

Q. What was its reputation?

A. Good.

Q. How did its value, as compared with the price that it commanded, compare with that of other Lake Superior charcoal iron?

A. It sold as high as any Lake Superior charcoal iron in the market.

Q. Are you a judge of iron when you see it?

A. Yes; I pretend to be.

Q. Did you see any of that iron at the time that contract was made?

A. Yes, sir.

Q. Before or after the contract was completed?

A. Before.

Q. Where did you see it?

A. On one of these docks down here.

Q. Who showed it to you?

A. Mr. White and I went down together.
Q. What examination did you make of it?

Mr. BALL: I object as irrelevant.

COURT: If it was not a sale by sample then we think it is quite immaterial as to the particular iron that was examined upon the dock here by Mr. Hanna, because that would cut no figure in the final disposition of the question whether the iron was such as parties were bound to accept and pay the advance upon. It is quite sufficient for the purposes of this trial, so far as at present developed, that the iron which the contract calls for (although nothing
65 is said in the contract as to quality) must be merchantable iron.

The law will say that under that contract whoever furnished this iron to these defendants was to furnish a merchantable quality of iron, and if on the market the Michigan charcoal pig-iron was a well-known quality of iron, was a standard among qualities of iron upon the market and well known, it would be expected that that kind of iron would be furnished.

Mr. MAYNARD: That is all we claim.

COURT: Then proceed directly to the question of whether this was merchantable iron.

Q. I will ask you first what iron you found in the yard when you returned to Cleveland about the 10th of September. You said there were two or three cargoes there Did you examine that iron?
A. Yes, sir; I did.
Q. How did you examine it? State fully the particulars:
A. I had a man break the pigs and made a personal examination of the iron.
Q. How many pigs?
A. Oh, I should suppose 20 or 30 pigs, selected indiscriminately—that is, taken from different parts of the pile.
Q. Is that the proper method of determining the quality of iron?
A. That is the method we have.
Q. Is there any other method of inspection?
A. No other method by inspection.
Q. What did you find?

Mr. BALL: I object to the question. It does not appear that this iron that was examined was shipped on account of these plaintiffs.

COURT: The witness speaks, I suppose, of iron shipped by Mr. White?
A. Yes, sir.

66 Mr. BALL: Another reason why this is immaterial is because the advance that was agreed upon had been made at that time.

WITNESS: The examination was made prior to the payment.

COURT: I suppose that whatever iron Mr. White shipped would be presumed to be within this contract unless the defendants were advised to the contrary. Perhaps it will save some little time to say this; and that whatever iron the defendants made advances on,

after having received the iron and examined it, would not be a subject of inquiry here on this trial.

Q. Now, Mr. Hanna, there was a cargo of iron shipped you on the 11th of September by the Winslow; do you remember the arrival of that cargo?

A. Yes; I was cognizant of the arrival of every cargo.

Q. Did you make it your business to inspect every cargo that arrived?

A. Yes, sir.

Q. What did you find the quality of that iron to be?

A. Part of it was good; all right; part of it was bad.

Q. The iron was in different numbers or grades?

A. Yes, sir.

Q. Which grade or number was the defective iron?

A. The No. 3; that that was graded No. 3.

Q. What was the matter of it?

A. It was burnt in manufacture. It was what we would call the life of the iron; the strength of the iron was destroyed.

Q. What did you do after this inspection?

A. We advised the parties in interest that we would not——

Mr. BALL: You advised them by letter?

A. The first thing I did when I saw the iron was to telegraph him here that——

Mr. BALL: The telegram is in evidence.

WITNESS: That we would not receive any more of that iron,
67 and would not make advances on it.

Mr. BALL: I object to the statement of what is in the telegram

Q. What was the fact with regard to subsequent consignments of iron?

A. There was a large consignment October 24, of No. 3.

Q. I will ask you, though, here, in which grade or number of the iron was the bad iron principally?

A. Principally in No. 3.

Q. There was a large consignment October 24th, of 288 tons; did you inspect that iron?

A. Yes, sir; there was over 300 tons arrived at that time; 386 tons of No. 3 by the Winslow.

Q. Well, there was only 288 of it belonged to Maas, Lonstorf & Mitchell?

A. Oh, yes; there was 386 tons to the account of Peter White on the Winslow.

Q. Showing the witness a paper. State what that is. Is that the bill of lading that came with the iron?

A. Yes, sir.

Q. How much ore was received by that steamer?

A. 654 tons and 320 pounds.

Q. This statement shows that 288 tons and 1,136 pounds belonged to this account.

A. The remainder, I suppose, belonged to Mr. White himself.

Q. Is there any distinction on the bill of lading between the different lots of iron there?

A. Yes, sir.

Q. You mean the different numbers?

A. Yes, sir.

Q. How much No. 3?

A. It is all No. 3.

Q. Is there any distinction, or is there any way that you can tell that any part of that belonged to one person and another part to another?

A. No, sir; all shipped in the same way—to the account of Peter White.

68 Q. Is it all shipped as one lot of iron? You said there was a distinction—what do you mean by distinction?

A. There are two bills of lading.

Q. One is a copy of the other, isn't it?

A. Oh, it is carried over from one bill to the other.

Q. How much iron was there, all told?

A. 654 tons and 320 pounds.

Mr. MAYNARD: We offer this bill of lading in evidence, marked Exhibits 5 and 6.

Q. That is 654,320 pounds, isn't it?

A. Is it all carried out in pounds?

Q. Yes.

A. Well, then, it is 386 tons and 1,140 pounds.

Q. How much of that shipment was to the account of Peter White?

Mr. MAYNARD: All of it.

Q. That was all No. 3 iron?

A. Yes, sir.

Q. You say you examined it?

A. Yes, sir.

Q. What was the quality of it?

A. It was all burnt iron—very poor quality.

Q. Without exception?

A. That lot without exception; it was entirely black and burnt.

Q. When you say black and burnt, what do you mean—how was it in regard to being merchantable iron?

A. It was decidedly unmerchantable iron as charcoal iron.

Q. Did you have any correspondence with Mr. White about it?

A. Yes, sir.

Q. During this time did you know of any person being interested in this iron but Peter White and the Michigan Iron Co.?

A. No, sir.

Q. Who did you recognize as the owner of the iron?

A. Peter White.

69 Q. Now, then, did you have opportunities of personal conversation with Mr. White during this time?

A. I did.

Q. Do you remember about the date of any interviews?

A. No; I could not recollect the date at this time.

Q. Well, during September and October, after this bad iron came down?

A. I don't think I had any interviews until some time afterwards.

Q. Until some time after it came down?

A. Yes, sir.

Q. Well, about what time, as nearly as you are able to state?

A. I think it was in the following winter.

Q. State whether the iron was still on hand.

A. There was quite a large portion of it.

Q. Did Mr. White examine it with you?

A. I think he did; my recollection is we showed him the iron.

Q. Do you remember what he said about it?

Mr. BALL: I object to that as irrelevant and incompetent.

COURT: I am inclined to think he would be your agent until the transfer of the account over to these plaintiffs.

Mr. BALL: Not to make admissions?

COURT: Yes; I think he would.

Mr. BALL: I will take an exception.

A. My recollection is that upon that particular iron that I allude to he thought there was no chance for an argument on the quality; he admitted it was poor iron.

Q. I want to call your attention to another thing that occurred there during that fall. About the 4th of November did any other parties interfere with your possession of the iron?

Mr. BALL: That I think we will object to.

Mr. MAYNARD: I will pass on to something else, then.

70 Q. (Showing witness a book). State what that book is.

A. That is what we call our receipt-book.

Q. Are you able from that book to testify to the amount of iron which was received?

A. Yes, sir; I have here the original entries of the amount of iron as received and entered at the time.

Q. Who made them?

A. Our book-keeper.

Q. Did you have knowledge of their correctness at the time they were made?

A. Yes, sir.

Q. By whose direction were they made?

A. The book-keeper himself opened the account upon the receipt of the iron—the first shipment of the iron he had charge of.

Q. Well, who directed the entries that were made there? State whether that book contains a statement of the receipts in tons of all that iron.

A. Yes, sir.

Q. Of the iron in controversy and other iron?

A. Yes, sir.

Q. All the Michigan iron that you received that year?

A. Yes, sir.

Q. What do the entries in the margin show?

A. For whose account it was received.

Q. Do you know anything about the entries which are under the head of freight and charges; what does that contain?

A. It contains the amount of freight paid.

Q. By whom?

A. By Rhodes & Co.

Q. Do you mean freight and charges on the bill of lading?

A. Yes, sir.

Q. Do you happen to know, as a matter of fact, whether there is any difference in these different lots of iron as to the amount of the back charges on them?

Mr. BALL: I think it appears that the iron went forward with some back freight.

71 A. The freight and charges following were all paid.

Q. State whether the freight and charges that are there set forth were paid by Rhodes & Co. upon the different consignments of iron.

A. Yes, sir; they were.

Q. Now, will you state the gross number of tons that was shipped by Peter White or shipped for the account of Peter White that year?

Mr. BALL: Does he state that he knows that from his own knowledge?

Q. What knowledge have you of the correctness of those entries?

A. Of the amount of charges or receipts?

Q. Of the correctness of all the entries in the books?

A. I know they are correct from personal knowledge; comparison of the bills of lading with the entries.

Q. Now, state the gross number of tons that was shipped per account of Peter White that year.

A. It was about 2,000 tons.

Q. You have account of sales, haven't you?

A. Yes, sir; I have an account of sales, but it is all in pounds, under the heads of different numbers or grades. It is about 1,980 tons, I should say.

Mr. MAYNARD: I offer that book in evidence to show the amount.

Mr. BALL: I object to it as incompetent.

COURT: The object of the book is for what purpose?

Mr. MAYNARD: It is a book showing the receipts of pig-iron by the defendants, kept by them, and Mr. Hanna identifies it and testifies that he knows the correctness of all the entries.

COURT: I don't see any objection to it. You can cross-examine him as to the entries.

Mr. BALL: He offers the whole book.

72 Mr. MAYNARD: That particular page, page 126. Now, let me ask you whether you met Mr. Maas when you were here in 1874?

A. I never saw him.
Q. Or Lonstorf or Mitchell, either of the plaintiffs?
A. Neither of them.
Q. When did you first meet either of the plaintiffs in this case?
A. Mr. Maas came to see us some time in January, 1875.
Q. Was that the first time you ever saw either of them?
A. Yes, sir.
Q. And subsequent to that time you saw the others?
A. Yes, sir.
Q. When did you first learn that the First National Bank of Negaunee had any interest in this iron?
A. Not until the suit was commenced.

Mr. BALL: I don't think that is at all material. We don't make any distinction between the two.
Mr. MAYNARD: I suppose not.

Q. Now, Mr. Hanna, have you with you an account of sales of this iron?
A. I have.
Q. Of all the iron that was consigned to you by Peter White?
A. Yes, sir.
Q. State what you know about their being a correct account?
A. I know them to be correct from personal examination.
Q. Have you compared them with your books?
A. Yes, sir.
Q. What do you know about the books being correct?
A. Well, I know that we keep our books correctly and have a faithful transcription of every transaction.
Q. State whether you supervised it?
A. Yes, sir; I had particular charge of this branch of the business myself.
73 Q. You had knowledge of the entries at the time they were made?
A. Yes, sir; the prices and charges; I made the prices myself.
Q. Have you the accounts of sales in your hands?
A. Yes, sir.

Mr. MAYNARD: We will offer them in evidence.
Mr. BALL: Do they differ from the statements furnished before?
Mr. MAYNARD: No; I don't claim anything different.
COURT: The items are numerous; counsel can look them over before the argument.
Mr. MAYNARD: Are you prepared to admit that our account of sales sets forth correctly the amounts we received upon the sales of this iron?
Mr. BALL: No; I don't admit that.

Q. State whether those accounts of sales show the correct number of tons and show correctly the prices received upon the sale of the same.
A. They do.

Q. State whether it contains the correct amount of freight and charges which you paid upon the bills of lading.

A. They do.

Q. State whether it contains the correct amount of dockage and storage to which you were entitled.

A. They do.

Q. State at what rate dockage and storage was charged.

A. We charge 75 cents a ton for dockage and storage for the first six months; after that the usual price was five cents a ton a month. I don't think we charged fully up to the amount of storage we were entitled to; the iron was on our hands so long.

Q. You said that the usual charge is five cents a ton a month after the first six months. Is that the usual charge in the city of Cleveland?

A. Yes, sir.

Q. And 75 cents a ton for dockage and storage the first six months. Is that the usual price?

74 A. That is [so] where the iron is weighed in the yard.

Q. State what advances you made to consignors upon that iron. Is there any dispute about that, Mr. Ball?

Mr. BALL: No, I guess not.

Mr. MAYNARD: We have all the drafts:

September 3, 1874, $13,131.80.

September 16, $12,358.12.

October 27, $2,547.25.

June 29, 1877, $10,000.

December 2, 1878, $3,834.26.

Q. State at what rate your commissions on sales were charged?

A. 2½ per cent.

Q. Was that the usual or customary rate?

A. Yes, sir.

Q. Was there any agreement in this case in regard to what the commission should be?

A. No, sir; we were selling other iron for Mr. White at the time; he knew what the rates were.

Q. That is the usual and customary rate without guaranty?

A. Without guaranty; yes, sir.

Q. Now, there are some miscellaneous charges in this account and disbursements. First, I find, December, 1874, for fishing iron out of the river, $2.15. Do you make any point on that, Mr. Ball?

Mr. BALL: No; I guess it is not worth while.

Q. For analysis, $40. State what the values were and what the custom is on that subject.

A. That $40 for analysis was made upon iron that was sold to the Detroit Bessemer Steel Co., and we negotiated a sale on the ground that it was low enough in phosphorus for Bessemer steel.

Mr. HELEY: I object to that. We didn't sell any iron to make Bessemer steel. We didn't sell iron for any such purpose.

75 COURT: I have an impression it is not admissible, but you may have some good reason why it is.

Mr. MAYNARD: We will show that, by the custom of trade, where men are selling iron upon commission, if they sell iron for a particular purpose and resort to an analysis to demonstrate that it is adapted for that purpose, that the cost of the analysis is charged to the iron. That was this case.

Mr. HELEY: We will withdraw the objection for the present.

Q. State what the practice is in regard to analysis: whether you paid that sum.

A. We paid for the analysis, which was necessary to do to make the sale.

Q. State whether that is the usual and customary charge for commission men.

A. Yes, sir; it is.

Q. You charge $42.62, general average, Tuttle. What does that mean?

A. The steamer Tuttle had some accident on her trip down, and that, under the law, is chargeable against the iron—the cargo's portion of the general average account.

Q. You charge in four different items $32 for breaking and sorting of iron. State whether that is a proper charge.

A. Yes, sir.

Q. Whether you paid it?

A. Yes, sir.

Mr. BALL: That is rather a broad question to ask the witness; whether it is a proper charge.

COURT: Is it a customary charge?

A. Yes, sir.

Q. You charge a rebate allowed the Richmond Works, $40.47. What is that?

A. That is because the quality of the iron wasn't standard, and we had to pay a reduction. A reduction was made to settle the account.

Q. It is the sum which you allowed them to settle the account?

A. Yes, sir.

76 Q. You have computed interest on your advances and allowed interest in the account at the rate of 10 per cent. up to a certain time?

A. Yes, sir.

Q. Up to the time that Maas and Lonstorf received the transfer?

A. Yes, sir.

Q. At the time you had notice of the transfer to them?

A. Yes, sir.

Q. State whether that was by virtue of an agreement or by virtue of a custom, or whether that is what you had to pay.

Mr. BAEL: I object to the question. The interest on advances would be governed either by statute or by express agreement. I don't think custom will affect the rate of interest.

COURT: If Mr. Peter White, in making this arrangement, shipped this iron upon the usual terms of commission men, that might involve 10 per cent., if that was the usual and customary way of commission men dealing with iron. But I think no custom could prevail otherwise, unless it was under such a contract that all parties must have understood that that 10 per cent. matter was included as to all advances. Otherwise I think it would be governed by the legal rate. The fair presumption is that Mr. White understood these parties to advance the money and were not hiring it for him.

Q. Now, your last account of sales shows a balance due the plaintiffs of $591.45; will you state whether that balance has been paid.

A. Yes, sir.

COURT. That was the last draft?

A. Yes, sir; I returned it to them myself.

Q. Now, there has been something said about some iron that was consigned to you by Samuel Schoch. It has no sort of connection with this case, but there has been some innuendo to the effect
77 that we have charged advances against it, &c., and we desire, if the court please, to show briefly the account of sales of that iron.

COURT: I suppose the witness can state whether it is included in this.

Q. State whether the iron of Samuel Schoch was included in the statement that you have there.

A. It is not.

Q. In the letter which you wrote which has been introduced in evidence, some time in 1874—about October, I think—you say that that iron wouldn't sell for the advance, or didn't bring the advance; something to that effect. State whether that was true or whether you were in error.

A. I wrote that letter without making any examination of the book, but I found Mr. Schoch's iron had been sold separately, and an account kept separately, and I was mistaken in the statement. I was merely showing to Mr. White the condition of the market.

Q. State whether that is a correct account of sales of the iron of Samuel Schoch as appeared upon your books.

A. Yes, sir.

Mr. MAYNARD: I offer it in evidence.

Mr. BALL: I would like to see the book that was made up from.

Q. State whether this account is taken from your books; and whether you know anything about its being correct.

A. It is taken from the books, and it is correct. The books were here at the last trial, but I took them back.

COURT: That is the account of the Schoch iron?

A. Yes, sir.

COURT: Was that ever mixed with the White iron?

A. No, sir; not in our accounts. It was piled in our yard with it.

COURT: In rendering the account that was not included at all?

A. No, sir.

78 Q. With regard to that account of sales you said it is correctly taken from your books. Have you the same knowledge in regard to the correctness of your books in regard to these sales as you have of the other?

A. Yes, sir.

Q. Was cognizant of its correctness at the time they were made?

A. Yes, sir.

COURT: Do you offer the paper?

Mr. MAYNARD: Yes, sir.

Mr. BALL: I object to it as incompetent.

COURT: I think it is admissible. I don't think it is necessary to produce the original books here. (Marked "Ex. 7.")

Mr. MAYNARD: I offer in evidence these drafts and papers. I believe the reporter took a memorandum of them.

COURT: Does this witness know that draft was paid?

Mr. MAYNARD: We had the correspondence in evidence this morning.

COURT: Does the witness know whether the draft was returned?

WITNESS: Yes, sir; I wrote the letter returning the draft personally.

COURT: You know that it went into the mail?

A. Yes, sir.

COURT: The presumption is if it went into the mail it reached the party. We think there is evidence enough so that if they didn't receive the draft the burden would be on them.

Letter marked "Ex. 8."

Mr. MAYNARD: Here is the receipt which I have offered in evidence, which I didn't read at the time, dated June 29, 1877.

Q. Do you remember when that receipt was given?

A. Yes, sir.

Q. To whom was the money paid?

A. To Mr. Lonstorf.

Q. He signed the receipt?

A. Yes, sir.

Receipt marked "Def'ts' Ex. 9."

79 Q. State whether you knew at this time that Mitchell had any interest in this iron.

A. I did not.

Q. Now, at the time when Lonstorf was there and you paid him that ten thousand dollars, what conversation took place between you and him relative to this iron and the condition of things?

A. He was very anxious to have the balance of the iron sold and wanted us to go ahead and sell it for the best price we could get, and give them their money.

Q. Was there anything said about the pending suit between them and White?

A. Yes, sir; that was talked about, but it had been talked about previously. The first I had heard of the suit was prior to that, from Mr. Maas, in the winter of '75.

Q. That was the proposed suit then, wasn't it?

A. Yes, sir; well, that was before suit was commenced. I don't think the suit had been commenced at this time.

Q. Did you have any conversation with Lonstorf about that suit?

A. Not about the lawsuit, I don't think. It merely had reference to the condition of the iron.

Q. State whether he examined your accounts at that time, your dealings with this iron, or had access to them.

A. He had access to them; I think our book-keeper furnished him a statement—perhaps not a detailed statement, but a statement of account as it stood, at his request.

Q. State whether he was furnished all he asked for.

A. All he asked for; yes, sir.

Q. When Maas was there, he came there you say, first, when?

A. January, 1875.

Q. What was his errand there, or what was the purport of it?

A. He came to my office and said he wanted to make some
80 enquiries with reference to the Michigan Iron Co.'s iron that we had in our hands. I asked him what he had to do with it; I didn't know him in the transaction.

Q. Did you know who he was?

A. Only what he told me; I never had seen him before; he told me that part of that iron belonged to them, and that they had instructed Mr. White to ship it to us, to consign it to us, to be sold on commission in his name, and that when we had declined to make the advance on account of the quality that Mr. White had agreed to put up more iron for margin, and that he put up his iron for margin, and that the money we had paid him he had paid himself with, and they was left in the lurch. Well, I told him I didn't know as we had anything to do with that quarrel at all and declined to give him any information at first, but afterwards gave him a statement of account as it stood on our books. He said he was going to see Mr. White and he wanted to know just how the thing did stand, so he could have some data to go by. We talked over the question there for an hour, I guess, about it; he was very bitter against Mr. White in the matter; said that he had been swindled and abused, and was very indignant.

Q. Did he exhibit any letter from Mr. White?

A. He never showed me a letter from White.

Q. At that time, I mean.

A. No, sir; nor afterwards.

Q. Or show anything showing his interest at all?

A. Nothing at all.

Q. At his subsequent visit which he testified to, soon after the 8th of June, 1875, do you remember that visit?

A. I don't remember the second visit of Mr. Maas. I remember the visit of Mr. Lonstorf, but I don't remember the second visit of Mr. Maas.

Q. You don't remember but one visit of Mr. Maas?

A. That is all I recollect distinctly.

81 Q. And only one of Mr. Lonstorf?

A. Only one of Mr. Lonstorf.

Q. And that you have testified to?

A. Yes, sir.

Q. Do you remember when that letter of Mr. White's was presented to you—that letter of the 8th of June—or do you remember of its being presented to your house?

A. Was that the order for the transfer?

Q. Yes; the order for the transfer.

A. Yes, sir; I have seen that letter.

Q. Do you remember where you saw it?

A. I think in our office.

Q. Who showed it to you?

A. I don't remember who showed it to me.

Q. Did Mr. Maas at that time say anything about White having exceeded his authority in the shipment of the iron?

A. Not at all. What he seemed to blame him for was for shipping some of his iron that was treated as collateral for additional margin. Owing to the quality of the iron we had refused to accept the full amount.

Q. Well, in November, 1875, did you have any difficulty with the possession of that iron on account of creditors?

Mr. BALL: I object to the question as irrelevant.

Mr. MAYNARD: We offer to show that from November, 1874, until May, '75, this iron was in the hands of the sheriff of that county under an attachment against the Michigan Iron Co. Some of the creditors of the Michigan Iron Co. got the idea that this iron was there being covered up, and they attached it and the parties were prevented from selling as they otherwise would.

COURT: If your theory is correct you are only bound to account for what it was worth. It is immaterial, I think.

82 Cross-examination by Mr. BALL:

Q. On the 11th, you say, you received some pig-iron by the Winslow; a part of the iron you say was bad?

A. 11th of what month, sir?

Q. 11th of September, 1874.

A. Yes, sir; the No. 3 was bad. It was not that particular cargo that I allude to; it was the 24th of October, of the Winslow.

Q. You didn't mean to say anything particularly about that cargo of the 11th, then?

A. I wasn't asked anything particularly in regard to that.

Q. I understood you say part of it was bad and part was good—that the No. 3 was bad?

A. Yes, sir; September 11 the Winslow had 79 tons of No. 3 and about 40 tons of No. 2. The No. 2 iron was good.

Q. Well, the No. 3 iron you say was not good?

A. No, sir; there wasn't but very little of it good.

Q. Was it too low grade?
A. No, sir; it was spoiled in the making. It had no grade to it.
Q. You complained to Mr. White about it, did you?
A. Yes, sir.
Q. You spoke of its being burnt in your testimony. Now, in your letter to Mr. White in regard to that iron why didn't you say something to him about its being burnt—complain of it on that account—if there was any such difficulty with it?
A. Well, I can't answer that question. I gave him information that the quality of the iron was not good; it was not standard iron nor merchantable iron.
Q. Was there any other iron besides that Peter White iron received on the Winslow of the 11th?
A. No, sir.
Q. On that shipment of the 11th?
A. No, sir.
83 Q. How much did you say there was of it?
A. 79 tons of No. 3 and 52 tons of No. 2.
Q. When did you examine that iron?
A. The day I got home. This particular lot do you mean?
Q. Yes; this iron that was shipped September 11th.
A. Oh, as it came into the yard.
Q. As it came off from the boat?
A. Yes, sir.
Q. Are you sure you were there when that iron came?
A. Yes, sir.
Q. You can recollect, can you, the particular lots of iron?
A. Yes, sir; I was at home all the time.
Q. That iron was sold afterwards, I suppose?
A. Yes, sir.
Q. Do you know what that iron brought?
A. This particular lot?
Q. Yes.
A. No; that particular lot was not kept separate.
Q. It was mixed up with other iron, was it not?
A. It was piled together—this Peter White iron.
Q. It was kept separate from any other No. 3 iron, was it that, was shipped from the Michigan Iron Co.?
A. That I could not say; there was a little lot of No. 3 iron that came down from Mr. Schoch; I presume that was piled with it, right alongside of it; I have no idea that it was piled in the same pile with it.
Q. There was no distinction made between it, was there, so that afterwards you could not tell the iron that came on account of Mr Schoch from this?
A. I could not say about the iron that was piled separately; our yard man had charge of the iron in the yard and kept all these things himself.
Q. After the iron was piled in the yard you had no way of distinguishing iron that came to the account of Mr. Schoch from

84 the iron that came to the account of Mr. White?

A. Oh, yes; we had a way of distinguishing.

Q. Well, how could you distinguish it?

A. We always marked the piles with the initials of the parties it belongs to.

Q. Didn't you mark these all Michigan Iron Co.?

A. No, sir.

Q. Didn't you enter these all on your books to the account of Michigan Iron Co.?

A. Kept under the heading "Michigan Iron Co." for account of Peter White and for account of Samuel Schoch.

Q. Now, you gave a statement of this account at one time and you put it all in as one account, did you not?

A. No, sir; I don't remember any such account.

Q. I suppose this is a deposition subscribed by you, is it not?

A. Yes, sir; that is my signature.

Q. Now, you gave a statement of the receipts of pig-iron of the Michigan Iron Co. and included in that iron shipped to account of Samuel Schoch as well as to Peter White, did you not?

A. That is a copy of this book.

Q. Then you gave a statement of the advances you had made upon that pig-iron, and you included in that also advances made to Samuel Schoch as well as to Peter White?

A. Well, I could not see what that statement was so far off.

Q. I didn't know but you might know from memory. (Showing witness a paper.) Here is a statement you made.

A. That is a statement made by Mr. Townsend, our book-keeper, and subscribed to by myself as a correct copy of our books.

Q. You stated that was a correct statement.

A. Copy of the books; yes, sir.

Q. Now, here is a letter that I read once, or a copy of a letter, that was given by you in the deposition that you made, written by Rhodes & Co., January 12. That copy, I presume, is in your

85 handwriting?

A. No; that is not my handwriting.

Q. Was such a letter as this written by your firm?

A. I wrote that letter, but I wrote it under a misapprehension at the time I wrote it. I supposed it had all gone into one pile, but I found it had not; that it was kept separate on the books.

Q. Was the account of Mr. Schoch kept separate on the books?

A. Yes, sir.

Q. When did you find that out?

A. After referring to the books. I wrote that letter without referring to the books—without making any inquiries. The iron received for account of Mr. Schoch was sold for account of Mr. Schoch, and all iron received for account of Peter White was sold for Peter White.

Q. Wasn't the iron that was received from Mr. Schoch sold altogether and charged up?

A. If it was included in the sale. For instance, in selling to the Detroit Bessemer steel concern we sold them all the No. 1 and 2 iron

we had in the yard. We credited up the amount due Mr. Schoch and the amount due Mr. White. I don't know any other way of keeping it than that.

Q. Now, when you rendered the account of sales and carried forward your accounts and charged up your advances to this iron, didn't you charge the advance made to Mr. Schoch right to the whole iron indiscriminately?

A. No, sir; if we did we made an error.

Q. Now, you say that iron was sold that you regarded as bad. For what purpose was it sold?

A. Well, I don't know what the parties did buy it for.

Q. You can tell when you sold it, can't you—when you sold that particular iron which you say was poor—that cargo of the Winslow of September 11th?

A. Nearly the whole of the No. 3 iron was poor—was all this quality I have described.

86 Q. I was asking you when you sold that?

A. I can't tell you.

Q. When you say the whole of the No. 3 iron what do you refer to—all the No. 3 iron of the Michigan make that was shipped to you that season?

A. Yes, sir—no, there was one little lot that came of Mr. Schoch's; most of that iron was a different quality of iron.

Q. How was that of Mr. White's?

A. The cargo that was particularly bad was the Winslow's cargo, October 24, that I spoke of; that was the worst lot of iron we got.

Q. What was the lowest price you got for any of that iron?

A. Twenty dollars a ton.

Q. How much did you sell at that price?

A. Not much; well, here is the last sale made—$23 a ton, cash; some at $25.

Q. That No. 3?

A. Yes, sir.

Q. When was it that sale of $25 was made?

A. That was in 1877—in May.

Q. Iron was pretty low at that time, was it not?

A. October, 1877, we sold nearly a hundred tons at $20. If you will allow me to explain—we had gone through this No. 3 iron pretty thoroughly, and broke it and graded it up; that was a little better than the other we picked out, and sold it at little better figures; that is this charge for breaking; we went through and regraded it and picked out the best of it, and got a little better price for that.

Q. Now, iron that you say you sold about a hundred tons in October, 1877, for $20, wasn't that the time when the iron was about the lowest before it began to revive at all?

A. No, I think '78 was the bottom.

Q. When it was pretty near the bottom—in October, 1877?

87 A. Yes, sir; it was pretty near the bottom then.

Q. What do you call merchantable iron?

A. Do you mean merchantable charcoal pig-iron?

Q. Yes.

A. Well, merchantable charcoal pig-iron is a standard brand that is known in the market, and has a reputation in the market for which charcoal iron is sold; in short, charcoal iron is the best quality of pig-iron made in this country, and that made from Lake Superior ores is particularly the best quality of iron made in this country. The purposes for which it is worth the most money is car-wheel and malleable iron, and in those days for Bessemer, but particularly car-wheels and malleable trade, because it is purer and freer from extraneous substances and injurious substances, and has the property of chilling for car-wheels, which makes it worth several dollars a ton more than for ordinary purposes.

Q. Is it all Lake Superior charcoal pig-iron that has this property of chilling, or only certain grades of it?

A. Only certain grades of it.

Q. Nos. 1 and 2 have no chill at all to speak of?

A. No, sir.

Q. No. 3 has slight chill?

A. No. 3 is the average chill for wheels.

Q. Nos. 1 and 2, although charcoal iron, are not particularly valuable for those uses you spoke of?

A. Nos. 1 and 2 are valuable for malleable purposes, and worth just as much almost as No. 3, but not for wheels.

Q. Is No. 3 suitable for malleable purposes, too?

A. Yes, sir.

Q. Nos. 1, 2, and 3?

A. Yes, sir, and 4, 5, and 6.

Q. Was this iron that you received, this No. 3 iron you speak of—was it not valuable for malleable iron purposes?

A. No, sir.

88 Q. Couldn't it be used for that at all?

A. No, sir; we sold some of it to malleable iron companies and it was returned.

Q. The only fault you found with this of October 11 is that 79 tons, you say, of No. 3 iron?

A. Yes, sir.

Q. Then you spoke of a shipment the 25th of October?

A. October 24th.

Q. That was all bad, too?

A. Yes, sir; that was all bad.

Q. There wasn't a redeeming feature about it?

A. Not a thing.

Q. Well, it was sold at the prices you have spoken of?

A. Well, you were talking about purposes for which charcoal iron is desirable. Of course it had the properties that any iron could have as pig metal. There are uses for any kind of iron, but it was worth ten dollars a ton more for some purposes than others.

Q. You say that was all bad. Had you seen it before you paid Mr. White's draft for part of it?

A. There was no draft paid on that at all; there was no advances made on that.

Q. I have a copy of a letter which you furnished us in reply to a letter of Mr. White's of the 24th. Mr. White's letter of the 24th advises you of a shipment of a quantity of iron by the Winslow, if I remember rightly, October 24th. He says: "I ship to you to-day by propeller Winslow" so much pig iron, and states to you what proportion is his and what partion he wishes to draw against, and advising you he draws on you for $2,547.25, and forwards note or will on the 26th—note of the Michigan Iron Co.—for $2,632, and you answer on the 28th, saying that "we are in receipt of yours of the 25th and will pay your draft, but will say to you not to make any further advance on that kind of iron." Now, isn't a fact that you paid his draft of twenty-five hundred and odd dollars?

89 A. I presume so; yes, sir; but not especially on that lot of iron, though. No time after the first two drafts was paid we made no advances on any particular iron. I made the drafts and wrote the letters, so I know.

Q. For what purpose did you sell that iron that you complained of?

A. Oh, it was sold for about what coke iron would sell for. It is sold principally for rolling-mill purposes, to be worked up into bar-iron of certain grades.

Q. For those purposes it was suitable or merchantable, was it not?

A. At the price it was sold at—the price of the cheaper grades of iron.

Q. The question I ask you is merely this: If it was merchantable iron for the purposes for which you sold it, or suitable for those purposes?

A. It was suitable for the purposes of the lower grades of iron, but not for what charcoal iron is sold for. It was not merchantable iron as charcoal iron is known in the market.

Q. I think you said that you had no knowledge that anybody was interested in this iron but Mr. White until some time in January. Do you mean to say that?

A. I mean to say that I had no knowledge that the plaintiffs had any interest in the iron until January.

Q. I understood you to say that you had no knowledge of any one but Mr. White. Is that what you mean?

A. I meant that I had no knowledge of anybody's having any interest in the iron—that is, of the plaintiffs having any interest in the iron.

Q. You knew the Michigan Iron Co. was the general owner of the iron, did you not?

A. When I made the arrangement I knew, or supposed I knew, the Michigan Iron Co. had a contingent interest in that iron.

Q. You kept the account with the Michigan Iron Co. all the time?

90 A. For account of Peter White.

Q. You supposed it was the Michigan Iron Co.'s iron, did you not, subject to Mr. White's lien?

A. I didn't suppose anything about it. We were dealing with the bill of lading.

Q. You say you didn't suppose that anybody but Mr. White had anything to do with it?

A. We looked to Mr. White entirely in the transaction.

Q. You wrote to Mr. White to get Mr. Ripka to put up additional margin; why did you do that?

A. Simply because when I was here Mr. Ripka had something to say about it with Mr. White, as treasurer of the Michigan Iron Co.

Q. You understood if any margin was to be put up it was for the Michigan Iron Co. to put it up, didn't you?

A. I understood it was for Mr. White to put it up; therefore I wrote to Mr. White.

Q. Why did you write to Mr. White to get Mr. Ripka to put up that margin?

A. Because Mr. White was the man we was dealing with—the man we knew in the transaction. We were acting under Mr. White's directions entirely.

Redirect examination by Mr. MAYNARD:

Q. I will ask you whether these are the bills of lading which were furnished you that came with the iron or came subsequently?

A. Some of these bills of lading, I think, came subsequent to the time the iron was received.

Q. There has a letter been put in evidence where you ask for a bill of lading of three shipments.

A. Well, those are the bills of lading.

Mr. MAYNARD: I offer them in evidence as being the original bills of lading marked "Exhibits —."

91 PETER WHITE, recalled for the defendants.

Examined by Mr. MAYNARD:

Q. I will ask you, Mr. White, if you know whether the iron upon which Maas, Lonstorf & Mitchell and the First National Bank of Negaunee had a lien was in their possession under their lien at the time that this contract was made?

Objected to as irrelevant. Objection sustained.

Q. Will you state if you know what the quality of this iron which belonged to Maas, Lonstorf & Mitchell principally was that was shipped under this contract, especially the No. 3 iron, if you examined it, after it got to Cleveland and before it left here?

A. I did not to any great extent. I examined some of it; not a great deal, and I found it poor. Mr. Hanna showed me some specimens in Cleveland that he had in his office and in his yard that were burned and very poor iron—poor quality.

Q. Well, was that iron that you examined—all which you saw specimens of there—merchantable Michigan charcoal iron?

A. No; I don't think it was. Some of it was very poor.

Q. You testified upon this subject quite fully before, didn't you?
A. I think I did.
Q. Did you testify at that time that you had examined the iron here and in Cleveland many times?

Objected to.

Q. Will you refresh your recollection by referring to the copy of your testimony that you have there on page 13 and see if you will be able to testify any more fully than you have done in regard to this examination?
A. Yes, sir. I testified that I had examined here and also in Cleveland in their yard many times and found it poor—the No. 3.
Q. What did you say it was worth relatively as to price at that time?
A. I think I said that I considered it worth half price at
92 that time.
Q. That testimony was given when your recollection was pretty fresh in the matter. What did you say was the matter of it at that time, if you now remember?

Objected to.

COURT. I think the better way is, what does he say now about it.

Q. Refresh your recollection by reading pages thirteen and fourteen of your testimony, and see what you would say about what was the matter of the iron.
A. Well, I said that it was rotten—brittle; it was marked a higher grade than it would bear out. It was marked No. 3, and it would be between No. 2 and three.
COURT: Is that what you would say now—is that your present opinion?
A. Yes, sir; I suppose it is. I had forgotten all about the examination of the iron.
Q. Do you remember that any of the iron was imperfectly made—full of cinders?
A. Well, I remember that there was one lot that seemed to have been made very poorly—was largely charged with cinders.
Q. Was that the Maas, Lonstorf & Mitchell iron?
A. I suppose it was. I have no certain means of identifying it as being that iron. It was Michigan iron.
Q. Are you able to tell good iron when you see it, or was you then?
A. I thought I was; I imagined I was.
Q. Is there any doubt about it; have you any doubt about it?
A. No, sir; I have not.
Q. Are you able to say how much of that iron was inferior quality, such as you have described?
A. No, sir; I am not. I have no means of telling what quantity was poor.
Q. Do you remember what you said at that time about it—can you refresh your recollection?
A. I think I said there was quite a large amount of it.

93 Q. Would that be your recollection now?

A. My recollection is that there was a very large amount of iron that was graded too high—marked No. 3 and wasn't No. 3.

Q. Was it rotten or brittle?

A. That iron that I looked at I couldn't tell how much was rotten or brittle; but a very large amount of it didn't come up to No. 3 while it was marked No. 3.

Q. Do you know when Maas, Lonstorf & Mitchell first applied for the advance—asked for anything in the way of an advance on this iron?

A. My present recollection is that it was the last Friday in December.

Cross-examination by Mr. BALL:

Q. Do you know that the iron you saw in Cleveland was Maas, Lonstorf & Mitchell's iron?

A. No, sir; I had no method of determining to a certainty that it was theirs.

Q. Did you even know it was the Michigan iron?

A. I believed it was Michigan iron.

Q. Did you know it was Michigan iron that had been shipped by you?

A. I believed it was. I had no certain knowledge of it.

Q. Where did you see it, in the yard or in the office?

A. Both; they had some pieces in the office broken, and a fresh break turned up for me to examine also in the yard.

Q. How many pieces did you examine in the yard?

A. Well, I might have examined twenty or twenty-five pieces.

Q. Were there some that were already broken?

A. Some were already broken, and he had a man break some fresh for me.

Q. Now, how many of those that you saw was rotten, brittle, or graded too high?

A. They were mostly graded too high. I don't remember of seeing but little that was rotten or brittle or cinders in it. A large amount of it was graded too high.

94 Q. That is, it should have been classed as two or two and a half?

A. Yes, sir; it would not go for car-wheel purposes, for which it was designed.

Q. But it would make good No. 2?

A. I suppose so.

Q. Well, you are acquainted with iron. From what you saw of it, that that you say was graded too high would make a fair No. 2 iron?

A. Yes, sir.

Q. Well, then, would you say that a lot of iron consisting of several hundred tons, if you happen to find a few pigs among it that were brittle or rotten, would you say that the lot was merchantable or unmerchantable—I mean the whole lot of iron?

A. No; a few pigs would not determine it.

Q. Then let me ask you further, from the number of pigs which you saw, which appeared to you to be rotten or brittle, would you pronounce that mass of iron or that lot of iron unmerchantable charcoal pig-iron?

A. I don't think I should.

Q. The fact of the iron being graded too low would not render it unmerchantable would it?

A. No, sir.

Q. It would be merchantable iron of a lower grade?

A. For other purposes.

Q. A lower grade by number—No. 2, for instance, instead of No. 3. You don't mean lower in quality, but lower in number?

A. Lower in number.

Q. From what you have seen of that iron, then, would you say that it was an unmerchantable lot of iron?

A. Well, some of it was; what proportion I am unable to tell; there was quite a considerable of it that I thought was very poor at that time.

Q. You mean some of the pigs you saw and examined?

A. Well, it seemed to me quite a large quantity, but how many tons it would be very difficult for me to form any estimate.

95 Q. What is the difference in the appearance between No. 3 iron and No. 2 and No. 1?

A. No. 1 is a grey open-grained, No. 2 is a little closer, and No. 3 is very much closer and rings like a bell when you strike it.

Q. Is there any difference in the color?

A. Little difference; yes, sir.

Q. Which is the darkest?

A. No. 3 is lighter; it grows whiter as it comes up.

Q. Then No. 1 would be the darkest color?

A. Yes, sir.

Q. No 2 would be darker than 3?

A. Yes, sir.

Q. And also the lower numbers, as I understand you, are more open?

A. No. 1 is more open and soft; you can cut it with a knife.

Q. Numbers one and two are merchantable iron as much as No. 3, are they not?

A. Yes, sir, except that No. 3 is used for certain purposes.

Q. But for the purposes for which they are required and used they are as merchantable as the harder iron?

A. Yes, sir.

Redirect by Mr. MAYNARD:

Q. Didn't you talk with the plaintiffs, Maas, Lonstorf & Mitchell, or some of them, about the inferior quality of this iron on the dock here before it was shipped?

Objected to as leading.

Q. Did you have any conversation with them about it?

A. I may have done so; don't remember now.

Q. You remember testifying this morning that you advised them that on account of its being of an inferior quality of iron you didn't think Rhodes & Co. would pay a draft?

A. Yes, sir; that was one of the reasons.

Q. That was after the iron was shipped?

A. Yes, sir.

96 Q. Did you talk with the officers of the Michigan Iron Co.?

A. Yes, sir.

Q. About the inferior quality of the iron, while it was going forward?

Objected to.

Q. Is it within your knowledge that the plaintiffs went to the office of the Michigan Iron Co. and remonstrated about the quality of the iron when it was going forward?

Objected to as irrelevant. Objection sustained.

Q. Did you hear the plaintiffs talk about the quality of the iron while it was going forward?

A. I don't remember that I did.

Q. Did you hear Mr. Maas talk about the quality of the iron afterwards—after his inspection of it in Cleveland?

A. I think I did, but I am not entirely certain.

Q. Did you hear him testify in the suit against you?

A. Yes, I have a dim recollection that he testified that he examined it and that he found some of it poor.

97. SAMUEL MITCHELL sworn for plaintiffs.

Examined by Mr. BALL:

Q. Mr. Mitchell, do you know anything about the value of pig-iron in the years 1877 and '78?

A. About '77 all I know about the value of it is what it was worth here. In the fall of 1877 charcoal pig-iron, the best grades, was worth from 17 to 19 dollars; ranging along the fall of '77 to '78 it was worth 17 dollars at the furnaces—the best grades. I had an offer in the spring of '78 of charcoal pig-iron, best grades, made at the National furnace, Depere, in pay for iron ore at 17 dollars, delivered free on board the cars there, and the offer was made through a gentleman that was in the employ of Rhodes & Co., selling our ore, and he offered to us that he could get National furnace iron at Depere for 17 dollars and pay for National mine ore.

Cross-examination by Mr. MAYNARD:

Q. Did you buy or sell any pig-iron during those years?

A. Mr. Masters took some of that same pig-iron——

Q. Well, answer the question—did you buy or sell any pig-iron during those years?

A. I did not.

Court here adjourned until 9.30 o'clock to-morrow morning.

WEDNESDAY MORNING, *July* 18, 1883—9.30 a. m.

Counsel for defendants reads in evidence the depositions of Masters, George H. Ely, Henry H. Brown, and James Pickands.

Mr. MAYNARD: I have prepared an analysis of the account of sales just as they were annexed to the depositions. It is in a con-
98 densed form. I will be sworn in regard to it.

M. H. MAYNARD sworn, and testified as follows:

This statement brings together upon two sheets all the figures of the different transactions—the different accounts of sales. I bring all the receipts together in one place instead of having to look for them over a lot of bills of lading. I bring together all the sales which run through a series of accounts of sales all on one page. If the court allows you to take this paper, as I hope he will, you will find by comparing it with the accounts of sales that it contains precisely the figures that the accounts of sales contain and nothing more. Then I have a classified statement classifying the different advances and disbursements. First the freight and charges paid in one item. If you were to attempt to look them up you would find them on 8 or 10 bills of lading. You will find them all brought together in one item and the dockage and storage. With reference to the date of the account at which it is charged it is all brought together, and gives us so much cash advanced to the different consignors; the commission on sales are all brought together, and miscellaneous charges and disbursements and interest account. They are all brought together on one page down to the last account of sales showing $591.45, which became due after this suit was commenced. I offer it in evidence merely to save the jury the labor, marked "Exhibit —."

Mr. BALL: These papers that have been offered in evidence, I suppose, can be given to the jury together with this statement attached to deposition.

Mr. MAYNARD: Certainly.

Defendants rest.

99 PETER WHITE recalled for plaintiffs.

Examined by Mr. BALL:

Q. Now, Mr. White, I will ask you whether as to the conversation had between you and Mr. Hanna at the time you added this Maas, Lonstorf & Mitchell iron to iron that you were to ship to Hanna, whether you would give your draft or give your paper for the advances?

Mr. MAYNARD: I object to that; it is not rebuttal. We have given no evidence on the subject.

COURT: I think you may ask the question.

Q. State what the conversation was upon that subject.

A. I don't think there was any conversation. Mr. Hanna re-

marked, "I suppose you will endorse the drafts, Mr. White?" I said, "No, I wont."

Q. Was there anything said about liability?

A. I think I remarked that I was not to be liable in any shape or form whatever.

Q. What was the understanding in regard to your connection or claim on the iron after you got your $28.25 a ton; whether you had anything further to do with the iron?

Mr. MAYNARD: I object to that as entirely a matter-in-chief.

COURT: I don't see the materiality of it, Mr. Ball.

Mr. HELEY: Do you know of a paper called the "Iron Age?"

A. I do.

Mr. HELEY: Whether it is relied upon as a standard reporter of the condition of the iron market?

A. I believe it is.

100 JOHN B. MAAS recalled for the plaintiffs.

Examined by Mr. BALL:

Q. Mr. Maas, did you ever pronounce that quality of iron that you had received, in pledge of these loans, bad?

A. Not that I know of.

Q. That you had examined it and that it was bad?

A. Not what we had received.

Q. You have said something in your testimony on the trial of the case against Mr. White, about examining some iron and finding it poor, and about not making any more advances on it. Will you state what that was?

A. I said I didn't care about making any more advances, because the iron was poor.

Q. What iron did you refer to?

A. That was some iron — after we got through making our advances. They wanted some more loans.

Q. Are you acquainted with the quality of iron?

A. Well, I am not an expert; I have seen a good deal of iron.

Q. Can you say anything about the quality of iron that you received from the Michigan Iron Co.?

A. Well, I didn't examine it much; only what we broke; some of it. It was about what the quality called for.

Q. In your judgment, it was a fair quality of charcoal iron?

A. Well, I take my own judgment; I could not tell; I wasn't an expert.

Q. You don't pretend to be an expert on the subject?

A. No, sir.

Q. Did you ever receive, yourself, that $591, claimed to have been sent to you after having sent it back?

A. That is as far as I understand it. It was sent back.

Q. Did you ever receive it back?

A. I did not. If it had been sent back there would be a receipt for it or a voucher that would show whether it was paid or not.

101 Cross-examination by Mr. MAYNARD:

Q. You don't know whether that $591 has been paid or not, do you?

A. No; I don't,

Q. Well, now about that iron. When you say that you examined it you mean the iron that you received in the first instance, don't you; the iron you examined is the iron that you received in the first instance when it was piled out to you at the furnaces?

A. Yes, sir.

Q. There was 380 tons of that iron that was short and was supplied afterwards; wasn't there any other iron?

A. That I don't know; our iron was all piled out as fast as we made advances.

Q. You know that that iron was short, don't you?

A. It was short, but it was all piled out before we made the advances.

Q. You didn't get that iron, did you, finally?

A. That I don't know; there was some talk about it that the iron was short.

Q. Don't you know that it was?

A. I don't know if we got the same iron back or not; the iron was there when we made the advances. but when it was shipped it was said it was short. Now, I don't know if we got the same iron back or new iron.

Q. Didn't you go up there and find the piles short?

A. I didn't go up, no.

Q. You understood it was short and made a good deal of trouble about it, didn't you?

A. I understood it was short, but I couldn't tell.

Q. Didn't you examine some of this iron after it reached Cleveland?

A. I din't. Mr. Hanna showed me some iron there, but I could not tell whose iron it was.

Q. You examined some iron there, didn't you; some Michigan iron?

102 A. I didn't; Mr. Hanna took me out in the yard and showed me some iron; he said it was Michigan iron. I could not distinguish it.

Q. Wasn't it marked?

A. No, not that I know of; generally they are marked with the initials of who it goes for.

Q. Didn't you testify in the other case that you examined it and broke it?

A. I didn't break it. I examined some what was shown me.

Q. Didn't you testify that it was poor?

A. Well, if that was the iron what I seen that wasn't standard iron—what I thought.

Q. Didn't you examine some of it on the dock before it left here—some iron that you knew belonged to you?

A. Well, I seen some iron on the Cleveland dock.

Q. Was that good iron?

A. That was the same iron what I seen down in Cleveland; that was the iron that surely had been sold and advances made on it; there was no complaint against the iron.

NICHOLAS LONSTORF, one of the plaintiffs, sworn in behalf of the plaintiffs, examined by Mr. BALL, and testified as follows:

Q. You are one of the plaintiffs in this case?
A. Yes, sir.
Q. Were you in Cleveland at the time of the payment of ten thousand dollars by Rhodes & Co. on the iron?
A. Yes, sir.
Q. And gave the receipt that has been read here?
A. Yes, sir.
Q. Who wrote that receipt—who drew it?

Mr. MAYNARD. That is immaterial, I think.

103 COURT. I suppose the purpose of the testimony is to explain that receipt?

Mr. BALL. Yes, sir.

COURT. What is the ground of the objection?

Mr. MAYNARD. It is immaterial who wrote the receipt, unless the witness is prepared to go further and say he didn't know what was in the receipt.

COURT. Oh, I think it is admissible.

A. Either Mr. Rhodes or Mr. Hanna wrote it; I don't remember now.
Q. At that time was there another suit pending against Mr. White in this same matter?
A. At that time there was a suit pending on the same question against Mr. White; at that time we believed that Mr. White was liable for the iron.
Q. Did you get any information at that time from Mr. Rhodes, from their books or otherwise, about this iron—that is, bearing on the liability of Mr. White or themselves?
A. Well, they said that Mr. White was liable for the iron.
Q. Did they say anything to you as to whether they had any knowledge of the iron belonging to other parties besides Mr. White?
A. Well, I don't remember that now.
Q. Do you recollect the receipt of the draft of $591?
A. I do.
Q. What did you do with it?
A. I received a draft for $500 and something over; I don't remember now how much it was, and a letter with it, and I showed it to Mr. Maas, and I think I came down to ask your advice on it, and you dictated a letter to me to return it; so I did.
Q. That letter that has been offered in evidence here—this is the letter that was received with the draft?
A. That is the letter that came with the draft.

104 Mr. BALL: I offer it in evidence, dated July 28, 1879 marked "Exhibit —."

Q. You say you sent the draft back?
A. I returned it.
Q. Did you receive it again?
A. No, sir; I did not.

Cross-examination by Mr. MAYNARD:

Q. (Showing the witness a paper.) That is the letter you wrote in reply to that, returning the draft, that you wrote at Mr. Hall's dictation?
A. That is it.
Q. Now, Mr. Lonstorf, you say you never received that draft from Rhodes & Co. again?
A. I did not.
Q. (Showing witness a paper.) Did you ever see a letter of which this is a copy?
A. No, sir; I never seen it.
Q. Mr. Lonstorf, didn't you keep any books of account?
A. Yes, sir.
Q. Did you at that time with this iron?
A. With that iron; yes, sir.
Q. You had the account of it?
A. Yes, sir.
Q. Have you got anything relating to it here—any account of it?
A. Not that I know of.
Q. Did you have any account on your books of the iron?
A. Yes, sir.
Q. On what books?
A. The account was kept in the bank.
Q. You didn't keep it?
A. I didn't keep it.
Q. It was kept in the bank?
A. Yes, sir.
Q. This money, if it had come, would have been the property of the bank, wouldn't it?
A. No. It came to me or to Mr. Mass, addressed to us.
105 Q. You were not in business together at that time, were you; you had no office together?
A. Yes, sir.
Q. I mean in '79?
A. No. I don't believe we was in the bank at that time.
Q. You had no office together, did you?
A. Yes, sir.
Q. Where?
A. At Mr. Hayden's office.
Q. In '79?
A. No; not in '79.
Q. Maas staid up at Humbol-t most of the time and you was down at Negaunee, wasn't you, as a matter of fact, in '79?
A. We were in the bank at that time; yes, sir.
Q. All these accounts kept in the bank?

A. Yes, sir.
Q. You didn't keep any account?
A. I didn't keep any account.
Q. You had a cashier there?
A. Yes, sir.
Q. Have you examined your books at all to know whether this $591 don't stand to the credit of your account now?
A. So far as I remember that draft has not been received by me or by anybody else that I know of.
Q. Have you examined your books lately?
A. No, I have not; if there is anything, there would be likely to be a receipt for it or endorsement on the back of it.

Mr. BALL: I will read from the deposition of Marcus A. Hanna, the first one taken in Cleveland (reading 5th, 6th, 7th, 8th and 11th interrogatories and answers thereto). I will read the 18th and first clause of his answer.

Mr. BALL: On the subject as to whether the iron was kept separate or not there is a deposition here made by Horace Townsend, who I understand is since deceased, The testimony was taken in another case on the subject of this iron; I presume it will be admitted that he is not living now.

106 Mr. MAYNARD: He is dead; his deposition will show that he was the bookkeeper of the concern. I think the deposition is incompetent testimony, and I object to it on that ground.

Objection sustained.

Mr. BALL: Then in the second deposition of Marcus A. Hanna is an account of sales which has been offered in evidence.

Mr. MAYNARD: You need not read them; they may be referred to in the argument.

Mr. BALL: I will read from this second deposition of Mr. Hanna, the fifth interrogatory and his answer thereto. (Reading.)

Mr. HEALEY: We will offer in evidence a copy of the "Iron Age," dated March 22, 1877.

Objected to as incompetent.

Objection overruled.

Defendants' counsel reads quotations of price of Lake Superior charcoal iron from the paper introduced in evidence.

Mr. HELEY; There are one or two more papers here.

Mr. MAYNARD: You may as well read them in your argument.

Testimony closed.

107 *Charge.*

GENTLEMEN OF THE JURY: I shall try and not invade your province, which is to determine the facts of this case, and whatever I may say in the course of the instruction I shall give you indicating any opinion of my own as to the facts you will regard as being entitled to

no influence upon your minds, the facts being for you to find, and not the court.

As I understand in this case there is no controversy touching the quantity of iron which was shipped by Mr. White and received by the defendants for account of these defendants and the First National Bank of Negaunee, the plaintiffs now being the owners and at the time of the commencement of this suit the owners of the claim of the First National Bank, whatever that may be.

Now, there being no dispute as to the quantity of this iron, the question which arises, and the most important question, it seems to me, is whether this was merchantable iron. The contract which has been read in your presence was an obligation on the part of these defendants to receive this iron as commission merchants and sell it for account of those special property owners and the general property owners. The special property owners being those who had a lien upon it, and the general property owners being the Michigan Iron Co., these defendants agreeing to advance $25.25 a ton in addition to some charges for freight, dockage, &c., which would be going to the special property owners or those having a lien upon the property. Now, this obligation, while it would make them liable for whatever merchantable iron was shipped and received by them in pursuance of the contract with Mr. White, would not make them liable for any iron which was unmerchantable.

The evidence shows that this Michigan charcoal pig-iron
108 was an iron well known in the market—had its character and its standing. It was graded, as all pig-iron is graded, into the different qualities, but there is nothing in this contract that required this iron to be of any one quality, but it must be of some of the qualities which on the market would be merchantable.

And in this connection, let me say, because I may forget it, if the No. 2 iron was marked No. 3 it does not follow that that iron would be unmerchantable. It might be merchantable as No. 2, though marked No. 3 iron. Those dealing in the article understand whether it is one thing or the other, and the mere mistake in numbering it would not render it unmerchantable iron. If the iron that was shipped to these defendants was merchantable in any of the grades into which it is usually graded that would be sufficient.

Now, I say the most important question perhaps will be as to the quality of the iron—whether it was merchantable or not. To be merchantable it should be up to the standard of this make of iron. It should be such iron as upon the market will sell as merchantable iron, and you, as business men, understand what that means. These defendants could not be expected to sell an inferior quality of iron as merchantable iron. If it was that sort of iron which parties to whom they sold—manufacturers of iron goods—would not purchase as merchantable, then it is not merchantable in their hands.

Some question has arisen in the course of the argument touching how far, to what extent, this iron must be poor in order to render it unmerchantable. You must determine from the evidence, gentlemen, whether any lot of this iron—any one shipment of the iron which went forward had such a considerable quantity of poor

iron of the class that would be unmerchantable as that it, that lot, could not be sold as merchantable iron; if it had enough of poor iron in it so that a dealer would not buy it as a merchantable lot, then these defendants are not chargeable in reference to that lot with the advance which they agreed to make, and they were under no obligation to sort over the iron and select the good from the bad. They are to deal with the lot as it came to them as a whole. I don't mean by this the mass of iron—all the shipment that were made—but each shipment by itself; each lot that came to them should be merchantable iron, suitable for the market, and if it was not then it was their privilege to reject it and refuse to pay therefor the advance which they had contracted to pay.

But a question has arisen in the course of the trial whether they would be liable if they received unmerchantable iron and didn't give advice of it. Upon that topic I can only say this, it must, in the first place be a question for the jury whether such was the fact—whether these defendants received unmerchantable iron and gave no advice to Mr. White of its character. We think they were bound seasonably and in the ordinary course of business to advise Mr. White of any iron received by them which they claimed to be such as they were not bound to make advances upon, if they regarded it as unmerchantable. But there is this in the case that these defendants did advise Mr. White by letter, and possibly by telegram in one instance, that certain of the iron which came forward to them was unsuitable; that they should be unwilling to make advances upon such iron unless there was a margin put up or something of that kind. I think that is the substance of the testimony. Now if that testimony related to the iron which these plaintiffs are seeking to recover for in this case, that was sufficient notice. Notice to Mr. White was notice to these plaintiffs, and that sort of notice would be adequate.

In reference to the price of this iron, or payments that were to be advanced from time to time by these defendants, as you have heard already in the conversation between counsel and the court, notwithstanding the contract of the defendants was for $25.25 per ton as an advance, the plaintiffs would not be entitled to recover any greater amount than the lien which they had upon the property shipped. I understand by the testimony that these plaintiffs and the bank advanced about $20 a ton, instead of $25.25. Now in no event could the plaintiffs recover, whatever you find the facts to be as to the merchantable quality of the iron, beyond the amount of such advance, and interest upon such sum thereof as the defendants failed to meet at the rate of 7 per cent. That would be the largest claim which the plaintiffs have a right to make, and is as great a sum as they would be entitled to recover in this action under any state of facts.

I think it must be understood from the testimony that the defendants had sufficient advice that the Michigan Iron Co. had an interest in this iron (they were the manufacturers of it) and that other parties held liens upon it for advances made for the iron company, and that thus there were two parties at least concerned in the iron. We think all the facts tend to show that, and we speak of it only

to call your attention to it that you may consider this feature of the case in applying the facts as to the defendants' liability for
111 any portion of the iron which was sent on account of these plaintiffs.

If, then, you take this case and determine the question of the merchantable quality of the iron which was shipped on account of these plaintiffs, and if you find that the plaintiffs are entitled to recover at all, it will be for such merchantable iron only as was shipped on their account, including that shipped for the bank, and it will be an amount not exceeding the amount of the lien which they had upon the iron and interest from the time when they were entitled to receive advances from defendants which they have not received to the present time. But there have been payments made. Those payments will be deducted from any amount which the plaintiffs would otherwise be entitled to recover. But it is a question for you to determine, in the first instance, whether there has been any failure on the part of these defendants to make the advances according to the contract. That will depend, of course, upon what the quality of the iron was. Whether it was such as we have stated the contract calls for, to wit, merchantable iron. Ascertain if there was such merchantable iron in lots and what it comes to at not exceeding $20 per ton, and interest on that from the time it should have been paid and was not paid, less the payments which have been made, and the balance would be the damages which the plaintiffs are entitled to recover, if you find there is any balance.

Now, I am requested by the defendant's counsel to give you instructions upon the subject of a computation which has been put in in connection with the evidence of Mr. Blake. As the request is written I think I must decline to give it. I don't think it
112 would aid you, and it is not my view of the case, and, therefore, I will not trouble you even to read the request. It seems to me, then, after all the time that has been spent in the case, that it is in a nutshell, and that while you may find some difficulty in reference to some particular fact, yet, taking the whole case together, you will readily reach a conclusion and will not be hindered or delayed in arriving at one, unless it is to make some computations, if you find that the plaintiffs are entitled to any verdict at all.

If there are no other special requests I will submit the case to the jury, gentlemen.

Mr. MAYNARD: Did I understand the court to allow the Blake computation to go to the jury as a proper basis of computation?

COURT: Not as a proper basis. I have given no instructions to the jury that it is a proper basis of computation. I have not examined it myself. I have given the jury the grounds upon which they can find a verdict for the plaintiff and it can be only upon such grounds. If they will be aided by that computation, should they find for the plaintiffs, in reaching a result they can take it and consult it, and they can take the computation which you made yourself.

Mr. MAYNARD: That is not a computation at all.

COURT: Well, the aggregate of the figures.

Mr. MAYNARD: We asked the court to charge the jury that under the contract in this case, and the evidence as it has been produced here, that the plaintiffs cannot recover at all upon the first count in their declaration.

COURT: I beg your pardon. I had a memoranda of that but it escaped my attention. I refuse that request. I think the first count is sufficient to entitle the plaintiff to recover if the facts are
113 such as are claimed by the plaintiffs in this case and come within the rules which we have laid down to the jury.

Mr. MAYNARD: It is not to the sufficiency of the count; it is to the sufficiency of the proof.

COURT: Well, that is a question, we think, for the jury, and we decline to weigh its sufficiency. We leave all the facts to the jury. I thought you referred to the count as not being sufficient.

Now, are there any other points?

Mr. MAYNARD: We except to that portion of the charge that there is evidence in this case tending to show that Hanna knew that the Michigan Iron Co. had any interest, or that the plaintiffs were especial lien-holders of this iron.

COURT: The reporter will note that exception. We think there is evidence tending to show that, and we leave it for the jury to say whether it is sufficient or not. We say there is evidence tending to show that fact.

Mr. MAYNARD: We ask the court further to charge the jury that up to the time that we had actual notice of Maas' and Lonstorf's or these plaintiffs' interest in this consignment that they were entitled to deal with White as the absolute owner upon the bills of lading, and to charge against the whole consignment any advances and expenses which were proper to be charged at all.

COURT: We decline to give that instruction because we think that there is some evidence which tends to show knowledge on the part of the defendants that others than Mr. White had an interest in this property, and that they were dealing with Mr. White in the interest of others. It is for the jury to say whether that is the fact or not. We say this, however, that if the jury should find that there was no ground for these defendants under the evidence to understand that they were dealing with anybody but Mr. White, then your proposition would be correct.

114 Mr. MAYNARD: The court, I suppose, would think it proper to tell the jury that there is no evidence that they knew to what extent anybody else was interested.

COURT: I think there is no evidence to show the extent.

Mr. MAYNARD: Or in which lots of iron anybody else was interested.

COURT: I am not prepared to say that, because some of the letters indicate that this lot is for Mr. White personally, and in other letters he says this is a separate and different lot, &c., and the jury must determine what that means.

Mr. BALL: I have one or two suggestions to make. In the first place, I think I understood your honor correctly, but it perhaps was

not so clearly given that I question whether the jury clearly understood your honor correctly on this point; that if any particular consignments of iron had so large a quantity of poor iron in it as to render that lot unmerchantable that the defendants would be released from their obligations or contract to make the advances upon that lot of iron.

COURT: Yes, I charged that.

Mr. BALL: But that would not release them from making advances on other lots that were up to the standard.

COURT: You are correct about that; it would not release them as to other lots; that the jury will understand.

Mr. BALL: I took the position in the argument, and ask your honor to charge, and I am inclined to think you charged a little against it, that if the defendants received the iron under the arrangement—that is, didn't decline to receive it except a new arrangement were made—that they would be bound by their contract to make the advances, notwithstanding the quality; in other words,
115 that merely finding fault with its quality and not declining to receive it under that arrangement would not release them from their obligation to make the advances.

COURT: I don't think I want to say that, because the iron had been shipped to Cleveland, and they were commission merchants, and they might make the most out of it they could for the parties interest[ed]. I don't think they would be bound to reject it, but they would be bound to notify White that they would not receive it under the contract.

Mr. BALL: That is what I mean.

COURT: Well, we think that if they notified Mr. White that this shipment of iron is not merchantable iron—not such as they are entitled to have—that is sufficient notice.

Mr. BALL: We except to that portion of the charge.

COURT: I said it was sufficient as to that lot of iron.

Mr. BALL: Your honor didn't give any charge in regard to what the jury might say in case they found the iron or any part of it was unmerchantable as to allowing the plaintiffs something on the actual receipts. Did I understand your honor to charge that we could not recover except on that agreement to advance—that on the other branch of the case we could not recover?

COURT: I will say to the jury on that point that if they should find that any lot of this iron was not merchantable, but was sold by the defendants, that the plaintiffs would be entitled to the proceeds, less the charges and commission and expenses of the defendants, provided it didn't exceed the amount of the plaintiffs' lien upon the iron. These plaintiffs had a lien upon the property whether it was merchantable or not, and if the defendants sold unmerchantable iron over and above their charges they should account to the plaintiffs.

116 Mr. MAYNARD: We desire to preserve an exception to the general refusal of the court to charge that if they find the relation of consignor and consignee or consignors and factors between these defendants and White as the agent of the plaintiffs, then in

such event there can be no recovery in this case upon the first count in this declaration.

COURT: I did not deem it necessary to say anything to the jury on that topic. You may have an exception.

Mr. MAYNARD: We desire to note an exception to each refusal of the court to charge as requested.

COURT: I think it was understood what I said about the first exception you just mentioned. Such would be the rule, as you claim it, if these defendants were dealing with this property simply as commission merchants, selling it for account of the owners, special or general owners, in the absence of a contract to make advances if they made advances beyond the value of the iron. Beyond the amount which they could sell it for or did sell it for, using good faith in the disposition of it, they would be entitled to recover back, of the owners, general or special, or for whose account they sold it, the excess over which they sold it for. But in this instance we say that there was a contract obligating these defendants to pay an advance—to make an advance—and these parties who had a special lien or claim upon property or special interest in it parted with the property on the strength of this contract, and, therefore, the rule would not be that the defendants could recover back anything from them.

Mr. MAYNARD: We except to that portion of the charge.

Mr. BALL: There is another thing I wish to call the attention of the court to. I wish to except if your honor intended to let the question go to the jury as to whether any part of the plaintiffs' iron of that October shipment, the one that is complained of
117 principally, was unmerchantable. I claim that there is no evidence to go the jury that any portion of the plaintiffs' iron of that shipment was unmerchantable. The evidence relates to some of that shipment, but only to a little less than two-thirds of that belonged to the plaintiffs or that the plaintiffs had anything to do with.

COURT. Well, it should be confined, then, to that which the plaintiffs had an interest in. It should not be applied to any iron of any other party.

Mr. BALL. I claim that there is no evidence to go the jury that there was any portion of the plaintiff's iron of that shipment that was unmerchantable. The testimony applied to the whole lot, and it could not be distinguished.

COURT: Well, I will leave it for the jury to determine.

Mr. BALL: I will note an exception to that.

118 EXHIBIT B.

"MARQUETTE, MICH., *Aug.* 22, 1874.

"PETER WHITE, Esq.

D'R SIR: We will advance $25.25 per ton on 500 to 1,000 tons Michigan charcoal pig iron when delivered at Cleveland.

Truly yours, RHODES & CO.

We will pay lake fr't & dockage, not to exceed 2.00 per ton, on the above and increase the amount of iron to 2,000 tons.

RHODES & CO."

119 EXHIBIT C.

"Statement of Maas, Lonstorf & Mitchell and 1st Nat. Bank, Negaunee—Iron Shipped Rhodes & Co. during 1874."

Date.	Boat.	No. 1.	No. 2.	No. 3.	No. 4.	Remarks.
1874.						
Aug. 25	A. L. Craig	------	49– 440	145– 500	------	Drawn against.
" 29	City Duluth	------	------	250–2210	------	"
Sept. 7	Atlantic	32– 540	------	------	------	"
Aug. 22	St. Paul	------	------	------	9–2190	"
Sep. 11	Windsor	------	54–1450	79–2100		
" 21	Atlantic	95–1582				
" 25	Windsor	180– 362				
Oct. 24	"	------	------	288–1136		
Nov. 2	H. B. Tuttle	70– 340	80–1400	27–1684	8– 835	
		378– 556	184–1022	792– 826	18– 758	

PETER WHITE, of Marquette, Mich., being duly sworn, deposes and says that the above written statement contains a true account of all shipments of pig-iron of the Michigan Iron Company's make shipped to Rhodes & Company, of Cleveland, Ohio, during the year 1874, upon which Maas, Lonstorf & Mitchell, or the 1st National Bank of Negaunee, or both of them, had any lien, claim, or demand; and said White further says that on Sept. 16th, 1874, he made a draft upon said Rhodes & Co. against the first four shipments enumerated above (as per marginal notes in above statement), amounting in the aggregate to 487 1400-2240 tons, for the sum of twelve thousand three hundred fifty-eight and 12-100 dollars ($12,358.12), which draft was duly paid by said Rhodes & Co., and proceeds thereof duly accounted for by said White to said Haas, Lonstorf & Mitchell and 1st Nat. Bank of Negaunee, less the sum of $170.62 paid for lake insurance on said four shipments of iron, which sum of $12,358.12 remains a lien upon said four shipments of iron in favor of said Rhodes & Co.; and said White further says that he has neither obtained nor knows of any further advance from said Rhodes & Co. upon any of above-described iron, amounting in all to 1373–894 gross tons, excepting freights.

PETER WHITE.

120 STATE OF MICH., } *Co. of Marquette.* } *ss:*

Subscribed and sworn to before me this 9th day of June, A. D. 1873.

C. N. FAY,
Notary Public, Marquette Co.

121 EXHIBIT D.

Also Marcus A. Hanna, of Cleveland, Ohio, aged 39 years and upwards, a witness produced and sworn and examined on the part of the plaintiffs in said cause, deposeth as follows, viz:

made and the time of making the same; and if with the Michigan Iron Company, state what person or persons acted for said company in making said contract.

In answer to said tenth interrogatory said deponent saith: I have answered this very fully in my answer to the eighth interrogatory, and it may be considered as an answer to this one. I will add, however, that in carrying out the arrangement spoken of, we had to do with Peter White in regard to some of the iron, over the shipments of which he claimed to have some control. He claimed he had control of the iron shipped to his account by the Michigan Iron Company, and we recognized him as acting for them in such shipments. We were also to pay his drafts against the iron, and that is all of any arrangement we had with Peter White.

Eleventh interrogatory. State whether or not you, acting for the said Rhodes & Co., ever made any arrangement with the said defendant in relation to said iron, before or at the time you made the contract with the Michigan Iron Company in relation to said pig-iron (if you answer you ever made any such contract with the said company), and, if so, state fully and at length what such agreement or arrangement was with the said defendant?

In answer to the eleventh interrogatory said deponent saith: At the time we made the arrangement with the Michigan Iron
125 Company, we agreed with Mr. White, the defendant, that we would make the advances which we afterward did make and which appear in said Exhibit "A;" that was all there was to it.

Twelfth interrogatory: State whether or not the firm of Rhodes & Company now has in its possession any pig-iron manufactured by the Michigan Iron Company and shipped to said Rhodes & Co., in August, September, October, & November, A. D. 1874, or in either of said months for account of Peter White, the defendant; and if yea, state the full amount of said pig-iron and the quality or grade thereof.

In answer to said twelfth interrogatory said deponent saith: We have on hand now 551 tons of such iron—552 tons No. 3 and 29 tons of No. 4.

Thirteenth interrogatory. If in answer to the preceding interrogatory you say the firm of Rhodes & Co. now has in its possession any pig-iron manufactured by the Michigan Iron Company and shipped in August, September, October, and November, 1874, for the account of Peter White, state whether or not the said firm of Rhodes & Co. has any demand or lien upon such iron, and if yea, state fully and at length the nature of such demand or lien and the amount thereof.

In answer to the thirteenth interrogatory said deponent saith: We have no lien now or demand upon said iron except what accrued dockage and interest and commission there may be when sold.

Fourteenth interrogatory. State whether or not you ever made any contract with the plaintiffs, John B. Maas, Nicholas Lonstorf, and John B. Mitchell, for the sale or consignment by them of any

pig-iron to Rhodes & Co.; and if so state what the nature of such contract was and when it was made.

In answer to said fourteenth interrogatory said deponent saith: Neither I nor the firm of Rhodes & Co. ever made any contract with them.

The further taking of this deposition is adjourned to August
126 14th, 1875, at 10 o'clock a. m.

C. W. NOBLE,
Commissioner.

Pursuant to adjournment the taking of this deposition is resumed at 10 o'clock a. m., August 14th, 1876.

C. W. NOBLE,
Commissioner.

Fifteenth interrogatory. State whether or not the firm of Rhodes & Co. now has in its possession any pig-iron received from the Michigan Iron Company and transported from Lake Superior to Cleveland in the months of September, October, & November, 1874, by the steamboats Winslow, Atlantic, and H. B. Tuttle, which was placed to the credit or account of Peter White or shipped for his account; and, if yea, state fully and at length what claim, if any, the said firm of Rhodes & Co. now has to said iron.

In answer to said fifteenth interrogatory said deponent saith: We have 551 tons of such iron, and upon which we have no claim, except dockage, interest, and commission when sold.

Sixteenth interrogatory. If in answer to any of the preceding interrogatories you say that the firm of Rhodes & Co. had consigned to it in the months of August, September, October, and November certain pig-iron manufactured by the Michigan Iron Company which was placed to the account of Peter White, the defendant, or shipped to you for his account, state the amount of money, if any, advanced by the said Rhodes & Co. upon such iron since said consignment and to whom the same was paid, giving the dates and amounts of each payment.

In answer to the sixteenth interrogatory said deponent saith: We advanced to Peter White an account of shipments made in his name, $28,037.17, as follows: We paid Peter White's sight draft, Sept. 11th, 1874, for $13,131.80; we paid his draft, Sept. 26, 1874, for $12,358.12; we paid his draft, Oct. 30, 1874, for $2,547.35.

Seventh interrogatory. State whether or not you now have under your control any letter or letters received from the said defendant
127 in reference to said pig-iron; and, if so, please attach the same to your deposition, designating the same by appropriate marks, giving a careful description of the same in your answer to this interrogatory.

In answer to the seventh interrogatory this deponent saith: We have letters from Peter White in reference to this pig-iron and other business matters between us, but I am unwilling to furnish them, although I am willing to furnish copies of all letters and parts of letters which refer to this iron from him, and desire the same to be

attached hereto and marked respectively Exhibits "1," "2," "3," "4," "5," "6."

Eighteenth interrogatory. State whether or not you know of the seizure of certain pig-iron of the Michigan Iron Company's make, in the possession of Rhodes & Co., which had been consigned to them for account of Peter White, the defendant, upon an attachment sued out by Edwards, Townsend and Co. against the said Michigan Iron Company; and, if yea, state if you know the date or dates of the arrival of said iron in Cleveland, the amount and quality or grade thereof, and what, if any, steps were taken by the defendant with reference to said iron after its seizure.

In answer to the eighteenth interrogatory this deponent saith: The lots of iron received were not kept separate, only the numbers; the attachment was made upon all the iron in our hands at that time, subject, of course, to our advances, which was a prior lien. I cannot give the dates of the arrival of the iron which was attached for the reason, as I have stated, that the lots were not kept separate. I think we had about 1,000 tons of Nos. 2 & 3 iron and about 20 tons of No. 4 iron, which were attached by Edwards, Townsend & Co. After the seizure Peter White came to see us and stated that the Michigan Iron Company had no interest in the iron until his claim was satisfied. He did not say how much his claim was. I do not remember any more of the conversation; that was the substance of the whole talk; the steps that Mr. White took for the release of the iron were through Edwards, Townsend & Co.;
128 the result of it all was that Edwards, Townsend & Co. released the iron voluntarily upon the statement of Mr. White.

Nineteenth interrogatory. If you say you know of the seizure of said iron mentioned in the preceding interrogatory as indicated therein, state whether or not you heard the defendant at any time thereafter say to whom said iron belonged; and, if so, state the name of such person or persons.

In answer to the nineteenth interrogatory this deponent saith: His statements to me were that to all intentional purposes that iron belonged to him, as it was shipped to his account.

Twentieth interrogatory. State whether or not you have any knowledge of the release of said iron by the said Edwards, Townsend & Co.; and, if yea, state whether or not you know the cause of such release; and, if so, state such cause; state whether any reasons were urged by this defendant for such release; and, if so, state such reasons fully.

In answer to the twentieth interrogatory this dependent saith: I know that the attachment was released; I understood the cause of such release to be that Mr. White had satisfied Edwards, Townsend & Co. that he had claims on the iron which would preclude the possibility of their getting anything out of it as the property of Michigan Iron Company; I understood this from Edwards, Townsend & Co. These were the reasons urged by the defendant for its release. Defendant did not say how much his claim was; he fell back on the fact of his ownership, the iron being shipped to his account.

I did not hear any of his conversations with Edwards, Townsend & Co. What I have above stated was what he said to me.

Twenty-first interrogatory. Please attach to your deposition all bills of lading you have of the pig-iron of the Michigan Iron Company's make shipped to Rhodes & Co., for account of Peter White, during the months of August, September, October, and November, 1874.

129 In answer to the twenty-first interrogatory this deponent saith: I am unwilling to attach the original bills of lading, but will attach copies, and hereto attach—, marking them respectively "Exhibits "7," "8."

Last interrogatory. Do you know any other matter or thing touching the matters in question that may tend to the benefit or advantage of the plaintiffs. If yea, declare the same fully and at large as if you were particularly interrogated thereto.

In answer to the last interrogatory this deponent saith: I do not know anything more.

MARCUS A. HANNA.

Exhibits fully embraced in and attached to deposition of July, 1878, except letters above referred to, marked 1, 2, 3, 4, 5, & 6, which are as follows:

"EXHIBIT 1."

"MARQUETTE, MICH, *Aug.* 30, '74.

Mess. Rhodes & Co., Cleveland:

I have shipped to you to-day, per city of Duluth, about 250 tons Mich. No. 3, and I shipped by Atlantic 27½ tons, and by Craig 194½ tons, and by St. Paul 10 tons, all "Michigan" iron.

I am also shipping you some Bancroft iron. Please be careful and not mix it with Michigan.

Yours truly, (Signed) PETER WHITE."

130 "EXHIBIT 2."

"MARQUETTE, L. S., MICH., *Sept. 3rd*, 1874.

Rhodes & Co., Cleveland, O.

DEAR SIRS: I have shipped you, under arrangements made with your "Mr. Hanna," two cargoes by Winslow and Atlantic, a little over 508 tons Mich. pig-iron, and at $25.85, which is $25.25; dockage paid here, 50c.; on insurance, 10c.; and it was shipped at $1.40, which makes $27.25, according to agreement with Hanna. I have drawn on you to-day for 13,131.80 in favor of Jas. Colwell, cashier, and have attached Mich. Iron Co. d'ft on you, 4 mos., 13,566, as you desired. Please honor the draft and oblige. I have made other shipments to you, but another party is interested in those, and these are mine.

Resp'y yours, (Signed) PETER WHITE."

EXHIBIT 3.

"MARQUETTE, MICH., *Oct.* 23, 1874.

Rhodes & Co., Cleveland, O.

DEAR SIRS: I expect to ship you this week of Mich. iron No. one, 70 tons; No. two, 75 tons; No. 4, 9 tons, & perhaps 20 or 30 tons more of No. 2.

Yours truly, (Signed) PETER WHITE."

131 EXHIBIT 4.

"MARQUETTE, MICH., *Oct.* 24, 1874.

Rhodes & Co., Cleveland, Ohio.

DEAR SIRS: I shipped you to-day by prop. Winslow freight, 2.00 per gross ton of 2268, all No. 3 Mich. pig-iron, 654320 lbs.
228980

883300 nearly 400 gross tons. Then you have 2 or 3 cargoes previous, upon which I have not drawn for anything. This 228,980 lot belongs to me individually, personally, and I wish to draw against it. Please pay my draft and greatly oblige me. It is 101 tons, say at $25.26, would be $2,547.25, and add $84.75 for int. for 4 months, would be $2,632. I will send you on 26th inst. the Mich. Iron Co. for $2,632 and draw on you at sight for $2,547.25, and hope you will honor the draft. I enclose 2 dup. b. l. of this shipment.

Yours truly, (Signed) PETER WHITE."

EXHIBIT 5.

"MARQUETTE, L. S., MICH., *Sept.* 16, '74.

Rhodes & Co., Cleveland.

DEAR SIRS: I shipped you by—

St. Paul	9–2196 tons.
Craig	194– 940
Duluth	250–2210
Atlantic	32– 540
	487–1400

Against which I enclose to bank Mich. Iron Co. draft on you at 4 mos., $12,770, with my draft attached, $12,358.12, which please honor. I have shipped you since above shipments, by Winslow, 134½ tons, but it belongs to another lot, which I do not wish to draw on at present, and this will leave an excess in your hands.

Yours truly, (Signed) PETER WHITE."

132 EXHIBIT 6.

"MARQUETTE, L. S., MICH., *Nov.* 3, '74.

Rhodes & Co., Cleveland.

DEAR SIRS: I hand you herewith a complicated b. l. of iron shipped you to-day by prop. "Tuttle," viz:

Michigan	No. 1	70– 340 tons.
"	No. 2	80–1400 "
"	No. 3	27–1684 "
"	No. 4	8– 836 "
		185
Morgan	No. 3	131–1702 "

I have advanced captain on freight $50.00, which I will draw for or arrange in a few days.

Yours truly, (Signed) PETER WHITE,
By C. H. FAY."

The Tuttle takes some 400 tons more at Grand Island and won't leave there for some days yet.

133 EXHIBIT E.

"Marcus A. Hanna, of Cleveland, in the State of Ohio, aged forty years and upwards, a witness produced, sworn, and examined on the part of the plaintiffs in said cause, deposeth as follows, viz:

First interrogatory. State whether you are or were formerly a member of the copartnership of Rhodes & Company, and whether you have formerly given evidence in this case upon interrogation before this commission in the month of August, 1876.

In answer to the first interrogatory witness says: Yes.

Second interrogatory. Look at the annexed paper marked "Exhibit A," purporting to be a copy of a statement of receipts of pig-iron which was annexed to your former deposition herein, and state what has been done with the pig-iron therein mentioned by your firm; annex hereto a detailed statement showing the iron sold by you of the several grades, with date of sales and the price obtained for each quantity sold; also stating the quantity, if any, unsold and the value of it, & what disposition you have made of it; also stating the charges you have against said iron, or the proceeds for advances or payments to the person for whose account it was shipped, giving the names of the persons to whom such advances or payments were made, with the respective dates, & also for other charges, giving items and dates, down to the time of giving your deposition.

In answer to the second interrogatory witness says: I hereto annex and request it to be marked "Exhibit B," a detailed statement showing all of the facts about which information is requested.

Third interrogatory. What was the market value per ton at Cleveland on the 15th day of June, 1875, of the several grades of the pig-iron mentioned in the annexed statement and what was the

market value of said iron at Cleveland in the month of October, 1874?

134 In answer to the third interrogatory witness says: In October, 1874, the market price was from $28.00 to $30.00 per ton. No sales were made by us in that month, however, of this iron. In June, 1875, we made no sales of this iron. Its market value here at that time I cannot state.

Fourth interrogatory. What amount of said iron of the several grades had you remaining unsold and in your possession on the 15th day of June, 1875?

In answer to the fourth interrogatory witness says: The statement marked "Exhibit B" will show what amount was on hand the first of the year 1875, & the subsequent account of sales will show the amount disposed of within the dates named.

Fifth interrogatory. Have you letter-press copies of any letters written by your firm and sent by mail to the defendant relating to the shipments, receipts, or sale of said iron, or to the advances made & to be made thereon? If yea, annex hereto copies thereof, with appropriate references, giving copies of all such letters as were sent by your firm to defendant during the years 1874 & 1875 in relation to said iron.

In answer to said fifth interrogatory witness says: I have such letters and annex copies of them hereto, marked, respectively, "Exhibits C, D, E, F, G, H, I, J, K, L, M, & N."

M. A. HANNA."

EXHIBIT H.

"CLEVELAND, *Sept.* 5, 1874.

Peter White, Esq.

DEAR SIR: The draft for ac't of Michigan Iron Company came forward without their endorsement, and was therefore returned. The panic in the charcoal iron market will make it necessary for them to give us more margin on advances, as prices have become

135 completely demoralized, particularly as their 3 iron will not grade 3, so that if we were obliged to sell all for 2 we would not get our money back. Of the am't of iron you shipped to cover d'ft, there is but a very small proportion 3. As soon as their d'ft is returned indorsed we will pay your d'ft, but please say to them that we must have a margin made up on the whole lot.

Truly yours, RHODES & CO."

EXHIBIT J.

"CLEVELAND, O., *Sept.* 14, 1874.

Peter White, Esq., Marquette, Mich.

D'R SIR: We are in rec't of yours of the 10th inst., with duplicate bills [of] lading for shipment of iron. The lot marked "1" for your ac't is not piled separate from the other, but we will account to you separately for it if you wish. We supposed when we paid you advances the ac't was Michigan Iron Co.

Truly yours, RHODES & CO."

EXHIBIT M.

"CLEVELAND, O., *Sept.* 21, 1874.

Peter White, Esq., Marquette, Mich.

D'R SIR: Your favors of the 16th inst. are at hand; also your d'ft for $12,358.12, with d'ft of Mich. Iron Co., which we declined to honor till we could have more margin on the iron, and have asked the bank to hold it till you could instruct them further. The 3 iron is not a salable metal, as it is burnt & will not chill.

136 We have written Mr. Ripka fully in regard to the metal, and, as it would not sell for the amount of the advances asked, we must delay it till he will arrange to give us a margin.

We are perfectly willing to make the advances, but must have standard iron that will sell, or else a safe margin that will justify us in holding the iron till it will sell.

We have received to date, including shipment by St. Paul, 1,131 tons Michigan iron.

Have p'd freight & charges		$2,044 71
Their d'ft, 4 mo's		13,131 80
And with their second d'ft for		12,770 00
Would make on the lot		27,946 54
Equal to	$24 70 per ton on the metal.	
& dockage	75	
Com. about	75	
	$26 20	

We don't think the iron would sell for that if forced on the market. Therefore, if we carry it, we want at least 100 tons more metal. Of course will hold the iron on your ac't till the d'ft is paid, but Mr. Ripka cannot certainly object to giving us the margin.

Truly yours, RHODES & CO."

EXHIBIT N.

"CLEVELAND, O., *Sept.* 21, 1874.

Peter White, Marquette, Mich.

Owing to inferior quality of iron we can't honor d'ft for that amount. Will you send more iron?

Ch'g. RHODES & CO.

(Telegram)"

137 EXHIBIT P.

"CLEVELAND, O., *Oct.* 28, 1874.

Peter White, Esq., Marquette.

D'R SIR: We are in receipt of yours of the 24th inst., and will pay your d'ft, but would say to you not to make any further advances to that amount on that grade of iron. All the 3 seems to be alike; it is not a chilling iron, and is so black and peculiar in

looks that no one will buy it. We do not care to have it, as we know we cannot sell it at a price that will satisfy them. Under any circumstances would not advance over $20,000 per ton here, and then only with the privilege of selling at what it is worth cash. We will not advance any more money on what we have in yard after paying your d'ft, and not over $20.00 on any more to come. Our market is 28 to 30.00 per ton, and prospects worse instead of better.

We know of a sale just made, 30.00 cash, delivered in Pittsburgh, fr't 3.36, so you can see what prices iron is being forced at, and will know how to govern yourself about making advances. What instructions have you to give us in regard to selling your iron. We offered it at 30.80, 4 mos., in yard. Would you sell for less?

Truly yours, RHODES & CO."

EXHIBIT S.

"CLEVELAND, O., *Jan'y* 12, 1875.

Peter White, Esq.

D'R SIR: As soon as the matter of ownership of the Michigan iron is settled, we would like to have a figure upon which to base a sale if opportunity is offered. Mess. E., T. & Co. told us several days ago that they had said to you that if you could satisfy them of your claim upon the iron, they would withdraw their suit. Therefore, if your claim is sustained, we suppose we are to look to you for orders about selling the iron. Their att'y said to the writer when you was here that we could sell the metal and hold the proceeds; but as Mr. Ripka declined the offer then made, we have made no further effort to sell. Shall we understand that the iron is not to be offered for sale at present.

Truly yours, RHODES & CO."

138 EXHIBIT I.

"CLEVELAND, O., *Jan'y* 12, 1875.

Peter White, Esq., Marquette.

D'R SIR: We are in rec'pt of yours of the 8th inst., and reply that we have not kept the shipments of iron separate, for reasons which we have explained, viz.: That we did not think but that it was all for ac't Michigan Iron Co. Of course we can credit a certain portion of our sales to the iron shipped ac't "Samuel Schock," making that all sold, and the balance would be the amount on hand on which we have the claim of the balance of our ac't rendered, with dockage and commissions. We are now delivering the iron sold, and if we could sell the balance, could then give the exact weights. The am't of iron rec'd for ac't S. Schock was 274–1100 tons. The price on those sales will not cover the am't we have advanced on that iron.

Truly yours, RHODES & CO."

EXHIBIT J.

"CLEVELAND, O., *May* 22, 1875.

Peter White, Esq., Marquette, Mich.

D'R SIR: Please deliver to order of Capt. Eber Ward 1,000 tons of 3 Bancroft iron as you may have it ready, and consign to Pratt & Setchworth, care Pratt & Co.'s dock, Black Rock, N. Y., lake freight as per contract.

Truly yours, RHODES & CO."

EXHIBIT K.

"CLEVELAND, O., *May* 22*d*, 1875.

Peter White, Esq., Marquette.

D'R SIR: We are in rec't of yours of the 18th inst., and reply that we cannot comply with your request to advance the amount named on the Michigan iron, for the reason that the iron in our hands will not sell for that amount of money. We do not suppose that you expected we would, as we did not agree to buy the iron, nor did we guarantee that its market value would not fall below $27.25 per ton. Therefore, even if we advance the amount you name, you would have to pay us the balance, did the proceeds not amount to enough. The trustees of the Michigan Iron Co. have instructed us to hold the iron for better prices; and now that E., T. & Co. have withdrawn their suit, and we recognize the iron as belonging to you, as ag't or otherwise, we will ask for definite instructions in regard to its disposition. If you want it sold, it must be at what must seem a low price, owing to its quality.

We have given Captain Ward an order for the 1,000 tons of "3" Bancroft iron, which you will please ship as soon as ready, and as his boats may call for it, to Pratt & Setchworth, care Pratt & Co.'s dock, Black Rock, N. Y. Please send duplicate b. of l. of each shipment to us. They want some by first boats down, and you can ship it as fast as you have it ready.

Truly yours, RHODES & CO."

EXHIBIT L.

"CLEVELAND, O., *June* 4, 1875.

Peter White, Esq., Marquette.

D'R SIR: In regard to the Michigan iron, we will state that we have now on hand by the books 1,014 tons of that "3" iron, which you will remember is not a quality of iron that will sell for either malleable or wheel purposes, for which "3" is usually required. Therefore we cannot expect to sell it for the price "3" of good brands will bring.

140 Our last sale was at $28.00 cash. We do not believe that any could be sold at that figure now, especially when "Bay Furnace" is selling at $28.00, 4 mos.

On the iron still on hand we have advanced $14,746.43, which is about $14.50 per ton, and add charges about $1.50 per ton, would make about $16.00 per ton, and we are willing to accept on it $6.00 to $8.00 per ton more, as your wants require.

If you will send your d'fts, 4 mos., we will accept & discount them, sending you proceeds. The writer has been in Pittsburgh for a week & and tried faithfully to sell some of the iron at satisfactory prices without avail. The truth is, Mr. White, that iron is duller now than it has been for six months, and such round lots of iron cannot be sold unless they are forced.

We have a letter from the First National Bank of Negaunee asking about the iron; we will give them the amount on hand and am't advanced, and refer them to you for further information.

Truly yours, RHODES & CO."

EXHIBIT M.

"CLEVELAND, O., *June* 14, 1875.

Peter White, Esq.

D'R SIR: Yours of the 10th inst. is at hand, and we note that you have transferred the balance of the Michigan iron in our hands to Maas & Lonstorf, and we understand we are to look to them for orders as to its future disposition. We regret that what we may have said should have made you any trouble. All we intended was to show how much iron we have on hand and what the advances were on it. Will let you know about the Morgan iron as soon as we can.

Truly yours, RHODES & CO."

141 EXHIBIT No. 1.

"CLEVELAND, O., *Sept.* 24, 1874.

Peter White, Esq.

D'R SIR: We are in rec't of yours of the 21st inst. with b. of l. of 95 tons of iron; also your favor in regard to d'ft. We don't go back on agreements, but we don't propose to put our "foot in it." Would you advance money on anything that you was not certain of getting it back again? That "3" iron is not all right. We have had all of our wheelmen examine it, and have had it tested, and not one of them would buy it at any price to put into wheels. It is not fit for malleable purposes; therefore the only thing it will sell for is mill iron. We tried to stop their sending it down, but they kept sending it. Now, we will pay your second d'ft as soon as this last shipment comes forward, and if there is no chance to sell the iron for wheel purposes, we will sell it for what it is worth. We are perfectly willing to hold the iron if we can have a margin and the iron is standard quality, but where advances are made and markets decline it is customary to make them good, is it not? At least, that is the way we do. Then you know the Michigan Co. are not in shape to put up much margin to cover shrinkage; therefore it behooves us to be on the safe side, which we propose to do, so don't get cross about it, for we are doing nothing unreasonable.

When the d'ft comes back we will pay it.

Truly yours, RHODES & CO.

You can see a sample of the iron we sent to Ripka.

R. & CO."

EXHIBIT T.

Receipts of Pig Metal by Rhodes & Co. [for] Ac. Michigan Iron Co.

Date of B. L.	Name of vessel.	No. 1: Tons.	No. 1: Lbs.	No. 2. Tons.	No. 2. Lbs.	No. 3. Tons.	No. 3. Lbs.	No. 4. Tons.	No. 4. Lbs.	No. 5. Tons.	No. 5. Lbs.	Freight & ch'g's.	Remarks on B. L.
1874.													
Aug. 22	St. Paul							9	2,190			19 95	Ac. P. White.
24	Atlantic			189	1,850	81	1,720					380 24	" "
26	A. L. Craig			48	1,670	147	560					391 25	" "
28	Winslow			243	80							340 20	" "
29	City of Duluth					245	1,300					469 31	" "
Sept. 7	Atlantic	32	170									61 02	" "
11	Winslow			52	2,140	79	2,130					382 77	" "
21	Atlantic	94	1,680									270 70	" "
25	Winslow	55	1,300			124	660					522 05	" Sam'l Shock.
Oct. 8	Phil Sheridan			43	1,910			63	1,370	26	1,660	268 41	" "
15	Arctic					101	340					202 30	" P. White.
24	Winslow					386	1,140					1,206 76	" S. Shock.
31	Arctic	34	840					3	1,700			85 78	" P. White.
	H B. Tuttle	69	760	75	970	33	1,040	8	700			652 62	
		284	270	654	660	1,200	2,170	85	1,480	26	1,660	5,253 36	

N. B.—The 8 following sheets belong to this Exhibit "T."

143 "EXHIBIT B."

Michigan Iron Co. in Ac. with Rhodes & Co.

CLEVELAND, O., *Dec.* 30, 1874.

1874.		DR.		
Sept	11.	To cash p'd d'ft, P. White	13,131 80	
	26.	" " " P. White	12,358 12	
Oct.	24.	" " " S. Schock	5,965 17	
	30.	" " " P. White	2,547 25	
Nov.	13.	" " " S. Schock	968 08	
Dec.	30.	" int. on above advances to Dec. 31, @ 10%	872 33	
		CR.		
Dec.	30.	By net proceeds of sales of pig iron, av'ge, due Nov. 20		23,807 58
		" int. on above to Dec. 31 @ 10%		271 12
		Balance		11,764 05
			35,842 75	35,842 75

Balance due Rhodes & Co. Dec. 31, '74, $11,764.05.

E. & O. E.

1874.	Sales.								
	No. 1.	No. 2.	No. 3.	No. 4.	No. 5.	Terms.	Price.		
Nov. 4				33^{2050}	23	30 days	35 50	2,162 48	
14				7		4 mos.	35 00	245 00	
"			3			"	33 00	99 00	
Dec. 10				10		"	32 00	320 00	
22				9		"	35 00	315 00	
26	290								
"		654^{490}	43^{860}			Cash Nov. 9	28 00	27,652 87	
	290	654^{490}	46^{860}	59^{2050}	23				$30,794 35

1874.		Charges.		
Nov. 1.	To p'd fishing iron from river		2 15	
11.	" E. R. Taylor for analysis of iron		28 00	
Dec. 3.	" " " "		12 00	
"	" gen'l average cargo, prop. H. B. Tuttle		42 62	
21.	" 4 days' labor, breaking & sorting pig, @ 2.00		8 00	
28.	" fr't & ch'g's on iron (see receipts)		5,253 36	
"	To int. due on above 45 days, @ 10%		65 66	
29.	" dockage on 1,073½ tons pig, sold @ 75c.		805 13	
	" our commission on sales, @ 2½%		769 85	
				6,986 77
	Net proceeds to Cr. Michigan Iron Co.			$23,807 58

E. & O. E.

Receipts of Pig Metal [for] Ac. Michigan Iron Co.

1874.	Vessel.	No. 1.	No. 2.	No. 3.	No. 4.	No. 5.	Fr't & Ch'g's.	
Aug. 22	Prop. St. Paul				92 130		19 95	Ac. Peter White.
24	" Atlantic		189 1850	81 1720			380 24	" "
26	" A. Le Craig's		48 1670	147 560			391 25	" "
28	" Winslow		243 80				340 20	" "
29	" City of Duluth			245 1200			469 31	" "
Sep. 7	" Atlantic	32 470					61 02	" "
11	" Winslow		33 1200					
"	" "		19 940	70 2130			382 77	" "
21	" Atlantic	94 1680						
25	" Winslow	55 1300		124 660			270 70	" "
Oct. 8	" Phil. Sheridan		43 1910		63 1370	26 1660	522 05	" "
15	" Arctic			101 340			268 41	" Sam. Shock.
24	" Winslow			386 1140			202 30	" "
31	" Arctic	34 840			31 700		1,206 76	" P. White.
"	" H. B. Tuttle	67 760	75 970	33 1040	8 700		85 78	" Sam. Shock.
		284 270	654 660	1,200 2170	85 1480	26 1660	652 62	" P. White.
							5,253 36	
	Sale above	290	654 490	46 860	59 2050	23		
Dec. 29	On hand			1,154 1310	25 1670	3 1660		

Cleveland, Dec. 29th, 1874.

145 *Sales of Pig Metal for Ac. of Michigan Iron Co. by Rhodes and Co.*

1874.		SALES.		
Dec. 4.	20 tons No. 3 pig, settlement Apr. 8, 1875, @ 26.00		520 00	
" 24.	20 " " " Jan'y 20, 1875, @ 33.50		670 00	
1875.				
Feb'y 10.	10 " " " M'ch 16, 1875, @ 29.43½		294 35	
M'ch 23.	70 " " " May 5, 1875, $3,000, @ 27.70		1,939 00	
" 30.	50 " " " June 9, 1875, 321.50, @ 27.65		1,382 50	
Nov. 1.	10 " " " Feb'y 12, 1876, @ 24.22		242 20	
	180 tons No. 3.			5,048 05
1875.		CHARGES.		
Feb'y 12.	To breaking and sorting iron		3 00	
Apr. 20.	" rebate allowed Richmond Mall. Iron W'ks		40 47	
Dec. 1.	" dockage on 180 tons sold, 75c.		135 00	
	" our commission on sales, @ 2½ %		126 20	
				304 67
	Net proceeds to credit of Michigan Iron Co			$4,743 38

Cleveland, Dec. 1st, 1875.
E. & O. E.

RECEIPTS AND SALES.

1874.		No. 3.	No. 4.	No. 5.
Dec. 29.	On hand pr. stat. rend.	1,154^{1310} tons.	25^{1670} tons.	3^{1660} tons.
1875.				
Dec. 1.	Sales as above	180 "		
"	On hand	974^{1310} tons.	25^{1670} tons.	3^{1660} tons.

146 *Michigan Iron Co. in Account with Rhodes & Co.*

CLEVELAND, O., *Dec, 1st*, 1875.

1874.		DR.	
Dec. 31.	To balance ac. rendered		11,764 05
1875.			
Dec. 1.	" 1 year's int. to Jan'y 1, '76, @ 10 %		1,176 40
	" dockage on 1,003^{1660} tons, balance unsold, 6 mos., Oct. 1, '74, to Apr. 1, '75, @ 6c. per ton, and storage for 9 mos. to Jan'y 1, '76, @ 5c. per ton per month @ 45c.; total, $1.20		1,204 18
	" 43 days' int. on $242.20, sales due Feb'y 12, '76, to make balance due Jan'y 12, '76, at 10 %		2 88
1875.		CR.	
Dec. 1.	By net proceeds of sales of iron		4,743 38
	" 268 days' int. on $520, Apr. 8, '75, to Jan'y 1, '76, @ 10 %		38 70
	" 346 days' int. on $670, Jan'y 20, '75, to Jan'y 1, '76, @ 10 %		64 39
	" 291 days' int. on 294.35, M'ch 16, '75, to Jan'y 1, '76, @ 10 %		23 75
	" 241 days' int. on $3,000, May 5, '75, to Jan'y 1, '76, @ 10 %		200 83
	" 206 days' int. on 321.50, June 9, '75, to Jan'y 1, '76, @ 10 %		18 41
	" balance		9,058 05
		14,147 51	14,147 51

Balance due Rhodes & Co. Jan'y 1, '76, $9,058.05.
E. & O. E.

147 *Michigan Iron Co. in Account with Rhodes & Co.*

1876.		Dr.		
Jan'y 1.	To balance rendered, due Jan'y 1, '76		9,058 05	
Dec. 31.	" 12 mos.' storage 151^{560} tons, balance on hand from Jan'y 1, '76, to Jan'y 1, '77, @ 5c. per ton per mo., 60c.		90 75	
"	" 1 year & 27 days' int. on balance due Jan'y 1, '76—$9,058.05—to Jan'y 27, '77, @ 10 %	973 74		
	Less int. on sales as per margin	626 26		
			347 48	
	Balance		10,811 61	
		Cr.		
Dec. 31.	By proceeds of sales as per ac.			20,307 89
			20,307 89	20,307 89

Balance due Michigan Iron Co. Jan'y 27, '78, $10,811.61.

Cleveland Dec. 31st, 1876.

E. & O. E.

1876.	Sales.								
	Tons.	Grade.	Terms.	Date due.	Days Int. to Jan'y 27, '77.			Rate.	Interest.
June 3	10	No. 3	30 days	July 6, '76	205 days	24 85	248 50	10 %	14 14
9	28^{1120}	"	"	" 12, "	199 "	"	708 23	"	39 13
10	30	"	"	" 13, "	198 "	"	745 50	"	40 97
12	10	"	"	" 15, "	196 "	"	248 50	"	13 54
13	10	"	"	" 16, "	195 "	"	248 50	"	13 42
14	94^{720}	"	"	" 17, "	194 "	"	2,343 88	"	126 29
15	130	"	"	" 18, "	193 "	"	3,295 50	"	176 63
16	120	"	"	" 19, "	192 "	"	2,982 00	"	159 02
24	20	"	4 mos. from Aug. 1.	Dec. 4, "	54 "	24 75	495 00	"	7 42
Nov. 13	30	"	30 days	" 16, "	42 "	"	742 50	"	8 65
14	30	"	"	" 17, "	41 "	"	742 50	"	8 44
Dec. 1	30	"	"	Jan'y 2, 1877	25 "	"	742 50	"	5 15
4	30	"	"	" 6, "	21 "	"	742 50	"	4 32
5	30	"	"	" 7, "	20 "	"	742 50	"	4 11
13	10	"	"	" 15, "	12 "	"	247 50	"	81
20	30	"	"	" 22, "	5 "	"	742 50	"	1 02
21	40	"	"	" 23, "	4 "	"	990 00	"	1 10
22	50	"	"	" 24, "	3 "	"	1,237 50	"	1 01
23	80	"	"	" 25, "	2 "	"	1,980 00	"	1 09
25	40	"	"	" 27, "	0 "	"	990 00	"	00
	852^{1840} tons.			Total interest					$626 26

		Total sales			$21,215 61
		CONTRA.			
Dec.	31	To breaking and grading 30 tons, 15c.		4 50	
	"	" dockage on June sales, 452^{1840} tons, 5c. p'r ton p'r mo. from Jan. 1, 6 mos., 30c.		135 84	
	"	" " Nov. " 60 " " " " 11 " 55c.		33 00	
	"	" " Dec. " 340 " " " " 12 " 60c.		204 00	
	"	" our commission on sales, $21,215.61		530 38	
					907 72
		Net proceeds to credit of Michigan Iron Co. Jan. 27, '77			20,307 89

E. & O. E.

RECEIPTS AND SALES.

1876.		No. 3.	No. 4 & 5.
Jan'y 1.	On hand	974^{1310} tons.	29^{1090} tons.
Dec. 31.	Sales as above	852^{1840} "	
1877.			
Jan'y 1.	On hand	121^{1710} tons.	29^{1090} tons.

Sales.

1877.	Tons.	Grade.	Terms.	Date due.	Day's int., after maturity, to Nov. 2, '77.			Rate.	Interest.
Apr. 6	10	No. 3	30 days	May 9, 1877	177 days	26 15	241 50	6%	7 12
May 31	15^{700}	"	4 mos	Oct. 3, "	30 "	25 00	382 81	"	1 91
June 30	6^{1840}	"	"	Nov. 2, "	0 "	"	170 53	"	00
	33^{300} tons.		Total interest to credit of Maas & Lonstorf						$9 03
			Total sales						$794 84

CONTRA.

To breaking and grading 110 tons	15c.	16 50
" storage on Apr. sales, 10 tons, from Jan'y 1, '77, 3 mos., @ 5c. per ton per mo	15c.	1 50
" storage on May sales, 15^{700}, tons, 5 mos., from Jan. 1, '77	25c.	3 82
" " June " 6^{1840} " 6 " " "	30c.	2 04
" our commission on sales, $794.84, @ 2½%		19 87
		43 73
Net proceeds to credit of Maas & Lonstorf, due Nov. 2, '77		$751 11

E. & O. E.

Mess. Maas and Lonstorf in Account with Rhodes and Co.

1877. Cr.

June 29.	By balance transfer-ed from Michigan Iron Co.'s ac., due Jan'y 27, '77		------	10,811 61
Aug. 10.	" net proceeds of sales of iron, due Nov. 2, '77		------	751 11
	" 279 days' int. on balance, due Jan. 27th, $10,811.61, to Nov. 2, '77, @ 6%	502 72		
	" int. on sales as per margin	9 03		
		$511 75		
	Less 112 days' int. on our accept., due July 13, $10,000.00, to Nov. 2, '77	186 67		
				325 08

Dr.

June 29.	To our accept. June 29, due July 13, '77		10,000 00	
	Balance		1,887 80	
			11,887 80	11,887 80
	Balance due Maas & Lonstorf, due Nov. 2, '77			$1,887 80

Cleveland, Aug. 10, 1877.
E. & O. E.

Receipts and Sales.

		No. 3.	No. 4 & 5.
June 29.	On hand, transfer-ed from Michigan Iron Co.'s ac.	121^{1710} tons.	29^{1090} tons.
Aug. 10.	Sales as above	32^{300} "	
Aug. 10.	On hand	89^{1410} tons.	28^{1090} tons.

150 *Sales of Pig Metal for Ac. of Maas & Lonstorf by Rhodes & Co.*

Sales.

1877.

Oct. 1.	89^{1410} tons No. 3—terms, 4 mos.—due Feb'y 4, '78, 20.00.		------	1,792 59
"	2^{1600} " 4 " " " " " "		------	54 28
	92^{770} tons.	Total sales		$1,846 87

Contra.

Dec. 31.	To 9 mos.' storage on sales, 92^{710} tons, from Jan'y 1, '77, @ 5c. per ton per month, 45c		41 55	
	" our commission on sales, $1,846.87, @ 2%		46 17	
				87 72
	Net proceeds to credit of Maas & Lonstorf, due Feb. 4, '78			$1,759 15

E. & O. E.

Receipts and Sales.

		No. 3.	No. 4, 5, 6.
1877.			
Aug. 10.	On hand p'r stat. rend.	89^{1410} tons.	29^{1090} tons.
Dec. 31.	Sales as above	89^{1410} "	2^{1600} "
1878.			
Jan'y 9.	On hand		26^{1730} tons.

Mess. Maas & Lonstorf in Ac. with Rhodes & Co.

1877.		Cr.		
Aug. 10.	By balance rendered, due Nov. 2, '77			1,887 80
Dec. 31.	" net proceeds of sales of iron, due Feb'y 4, '78			1,759 15
"	" 94 days' int. on $1,887.86, due Nov. 2, '77, to Feb'y 4, 78, @ 6%			29 56

1877.		Dr.		
Dec. 31.	To 12 mos.' storage on 26^{1730} tons, balance on hand, from Jan'y 1, '77, to Jan'y 1, '78, @ 5c. per ton per mo., 60c.		16 06	
	Balance		3,660 45	
			3,676 51	3,676 51
	Balance due Maas & Lonstorf Feb'y 4, '78			$3,660 45

Cleveland, Jan'y 9th, 1878.
E. & O. E.

151 EXHIBIT F.

"MARQUETTE, MICH., *Aug.* 30, 1874.

Mess. Rhodes & Co., Cleveland:

I have shipped to you to-day, per City of Duluth, about 250 tons Mich. No. 3, and I shipped by Atlantic 27½ tons, and by Craig 194½ tons, and by St. Paul 10 tons, all Michigan iron. I am also shipping you some Bancroft iron. Please be careful and not mix it with Michigan.

Yours truly, PETER WHITE."

EXHIBIT G.

"MARQUETTE, MICH., *Sept. 3rd*, 1874.

Rhodes & Co., Cleveland.

D'R SIRS: I have shipped you under arrangements made with your Mr. Hanna two cargoes, by Winslow & Atlantic, a little over 508 tons Mich. pig-iron, and at $25.85, which is $25.25 dockage, paid here 50c. and insurance 10c., and it was shipped at $1.40, which makes $27.25, according to agreement with Hanna. I have drawn on you to-day for $13,131.80 in favor of Jas. Colwell, cashier, and have attached Mich. Iron Co.'- d'ft on you, 4 mo's, $13,566, as you desired. Please honor the draft and oblige.

I have made other shipments to you, but another party is interested in those, and these are mine.

Resp'y yours, PETER WHITE."

152 EXHIBIT K.

"MARQUETTE, MICH., *Sept.* 10, 1874.

Rhodes & Co., Cleveland, Ohio:

Yours of 3rd inst. asking for b. of l. of iron shipped duly received, but have had some delay in getting same.

I hand them in herewith, with a list of shipments, including everything sent you, I believe. Please keep the iron marked on the

list "lot No. 1" separate from that marked "lot No. 2," as the latter is in my hands for account of other parties as well as myself.

Yours truly, PETER WHITE,
Per C. N. FAY."

Enclosure in Above Memorandum of Iron to Rhodes & Co., Ac. Peter White, Michigan Iron.

Lot No. 1.

		Boat.	Grade.	Tons.	Pounds.
Aug.	24.	Atlantic	No. 2	149	1,858
			No. 3	81	1,712
"	28.	Winslow	No. 2	206	1,212

Lot No. 2.

"	28.	St. Paul	No. 4	9	2,190
"	26.	Craig	No. 2	49	440
			No. 3	145	500
"	29.	Duluth	No. 3	250	2,210
Sept.	7.	Atlantic	No. 1	32	540

EXHIBIT L.

"MARQUETTE, MICH., *Sept. 16th*, 1874.

Rhodes & Co., Cleveland.

D'R SIRS: I shipped you by—

St. Paul	9–2190 tons
Craig	194– 940 "
Duluth	250–2210 "
Atlantic	32– 540 "
	487–1400 "

Against which I enclose to bank Mich. Iron Co. d'ft on you at 4 mo's, $12,770, with my d'ft attached, $12,358.12, which please honor. I have shipped you since above shipments, by Winslow, 134½ tons, but it belongs to another lot, which I don't wish to draw on at present, and this will leave an excess in your hands.

Yours truly, PETER WHITE."

153 EXHIBIT O.

"MARQUETTE, L. S., MICH., *Oct.* 24, 1874.

Rhodes & Co., Cleveland, Ohio.

DEAR SIRS: I shipped you to-day, by prop. Winslow, freight $2.00 per gross ton of 2268, all No. 3 Mich. pig-iron, 654320 lbs.
228980 "

883300, nearly 400 gross tons. Then you have 2 or 3 cargoes previous, upon which I

have not drawn for anything. This 228,980 lot belongs to me individually, personally, and I wish to draw against it. Please pay my draft and greatly oblige me. It is 101 tons, say at $25.25, would be $2,547.25, and [copy illegible], would be $2,632. I will send you on 26th inst. the Mich Iron Co. note for the 2,632 and draw on you at sight for $2,547.25, and hope you will honor the draft. I enclose 2 dup. b. of l. of the shipment.

Yours truly, PETER WHITE."

EXHIBIT Q.

"MARQUETTE, MICH., *Nov.* 3, '74.

Rhodes & Co., Cleveland.

D'R SIRS: I hand you herewith a complicated b. of l. of iron shipped you to-day by prop. "Tuttle," viz:

Michigan	No. 1	70–340 tons.
"	No. 2	801–400 "
"	No. 3	271–684 "
"	No. 4	8–836 "
		185
Morgan	No. 3	131–1702 "

I have advanced capt. on freight $50, which I will draw for or arrange in a few days.

Yours truly, PETER WHITE,
By C. N. FAY.

The Tuttle takes some 400 tons more at Grand Island and won't leave there for some days yet."

154 EXHIBIT R.

"MARQUETTE, MICH., *Jan'y* 8, 1875.

Mess. Rhodes & Co., Cleveland.

D'R SIRS: Please render me a statement of iron sold per my ac't from Michigan Iron Co. up to 1st inst. The Mich. people show me your ac't rendered them, but say it includes iron shipped subject to lien of S. Schoch, rendering it impossible for me to get any idea what iron of mine is sold, what on hand, and what the balance in your hands against it is.

Yours truly, PETER WHITE.
FAY."

EXHIBIT U.

"CLEVELAND, OHIO, *July* 28, 1879.

Sales of Michigan pig metal by Rhodes & Co. for account Maas and Lonstorf.

1879.	Sales.		
July 28.	26–1730 tons, terms cash, at $23.00		$615 76
	CONTRA.		
July 28.	To 7 mo's' storage on 26–1730 tons from July 1, '79, at 5c. per ton per month, 35c.	$9 37	
July 1.	Com. on sales, $615.76, at 2½	15 39	
			24 76
" "	Net proceeds to cr. of Maas and Lonstorf		$591 00

CLEVELAND, *July* 28, 1879.

Messrs. Maas and Lonstorf in ac't with Rhodes & Co.

CR.

1878.			
Dec. 13.	Bal. rend. Jan. 9, '78		$3,660 45
" "	By error in stat. rend. this date, Dec. 13. Bal. on stat.		3,660 00
			45
1879.			
July 28.	By net proceeds of sales of iron		591 00
	Am't due Maas and Lonstorf		$591 45"

155 EXHIBIT V.

"OFFICE OF RHODES & CO.,
CLEVELAND, O., *June 4th*, 1875.

F. E. Snow., Esq., cash'r, Negaunee, Mich.

D'R SIR: We are in receipt of yours of the 31st ult., and reply that the amount of Mich. iron in our hands at present time is 1,014 tons, on which we have advanced $14,746.43, which does not include our charges for commission, dockage, & interest.

For further information we must refer you to Mr. Peter White.

Truly yours, RHODES & CO."

Affidavit on back of letter as follows:

"STATE OF MICHIGAN, } ss:
County of Marquette, }

Peter White, of said county and State, being duly sworn, deposes and says that there is in the hands of Rhodes & Co., of Cleveland,

Ohio, shipped by this deponent for sale for account of Peter White, eight hundred eighty-four tons of 'Michigan' pig-iron, shipped to them in the season of navigation of 1874, upon which the said Rhodes & Co. have made no advance of money upon other than that necessary to pay the freight that was a lien upon the iron in favor of such boats as carried it to Rhodes & Co., and that Nicholas Lonstorf and John B. Maas, of Negaunee, are entitled to said iron or the proceeds thereof.

This deponent expressly and unqualifiedly swears that he, the said White, has not had or procured any loan or advance upon said iron above named; knows of no other person doing so; further says not. PETER WHITE.

Subscribed and sworn to before me this 9th day of June, A. D. 1875.

EDWARD P. WILLIAMS,
Notary Public, Marquette County, Michigan."

156 EXHIBIT W.

"OFFICE OF PETER WHITE,
MARQUETTE, L. S. MICH., *June* 8, 1875.

Rhodes & Co., Cleveland, O.

D'R SIRS: You will please transfer to the account of J. B. Maas and W. Lonstorf eight hundred and eighty-four tons of "Michigan" pig-iron, shipped to you for account of Peter White. The iron belonged to them when I shipped it, and was shipped in my name for convenience, expecting that, under the contract with Mr. Hanna, they would get their money as soon as it arrived at Cleveland, and now I transfer the iron back to said parties. You will settle with them, and all without further recourse to me.

Yours truly, PETER WHITE."

157 EXHIBIT X.

"Maas, L. M.	White.	Schoch.		
9–2190	189–1850	43–1910		
48–1670	81–1720	63–1370		
147– 560	243– 80	26–1660		
245–1300	100– 4	101– 340		
33– 170		34– 840		
52–2140		3–1700		
79–2130				
94–1680	614–1414	273–1100		
55–1300				
124– 660	Totals.	Their totals.		
286–1136	1388–2216	284–270	Addition wrong.	284– 270
67– 760	614–1414	654–660		653–1900
75– 970	273–1100	1200–2170		1199–2170
33–1040		85–1480		85–1480
8– 700		26–1660		26–1660
26–1730		26–1730		26–1730
1388–2216	2277– 250	2278–1250		2277– 250

Dec. 29, '74.	Net proceeds to credit of M. I. Co.		23,807 58	
" 1, '75.	" " "		4,743 38	
" 31, '76.	" " "		20,307 89	
Aug. 10, '77.	" " M. L. & M.		751 11	
Dec. 31, '77.	" " "		1,759 15	
July 28, '79.	" " "		591 00	
				$51,960 11

2277 250–2240 tons, $51,960.11—$22.81. 43.51 per ton.

M. L. & M.	1388	2216–2240 tons, at $2,281.43-51		31,694 56
P. White	614	1414–2240 " "		14,024 90
S. Schoch	273	1100–2240 " "		6,240 65
				$51,960 11

2277 250–2240 tons, at $25.25, $57,497.07."

158 EXHIBIT Y.

From Rhodes & Co.'s statements.

Sales of iron made up to Dec'r 31, '74	----	$23,807 58
Maas & Lonstorf's proportion ($\frac{13}{22}\frac{8}{40}\frac{8}{7}$)	----	14,522 62
Maas & Lonstorf's draft, Sept. 20, '74	$12,358 12	
" int. on dr'ft to Dec. 31, '74, less int. on sales, 10%	222 00	12,580 12
Balance due Maas & Lonstorf on sales, 1874	----	1,942 50
Interest to June 29, '77, 2 y's 5 mos & 29 days, at 6%		291 04
Sales of iron made up to Dec. 31, '75	$4,743 38	
Int. allowed on same to Dec. 31, '75, by R. & Co., St.	346 08	
	$5,089 46	
Maas & Lonstorf's proportion	----	3,104 55
Int. to June 29, '77, 1 y'r 5 mos. & 29 days, at 6%	----	278 84
Sales of iron made up to Dec. 31, '76	$20,307 89	
Int. allowed on same to Dec. 31, '76, by R. & Co., St.	626 26	
	$20,934 15	
Maas & Lonstorf's proportion	----	12,782 47
Int. to June 29, '77, 5 mos. & 29 days, at 6%	----	381 36
		18,780 76
Paid June 29, '77	----	10,000 00
Balance	----	$8,780 76

Int. to Dec. 13, '78, 1 y'r 5 mo. 15 d., at 6%	----	768 31
Sales of iron made up to Aug. 10, '77	$751 11	
Int. allowed on sales by R. & Co.	9 03	
	$760 14	
Maas & Lonstorf's proportion	----	463 65
Int. to Dec. 13, '78, 1 y'r 4 mos. & 3 days, at 6%	----	37 32
Sales of iron made to Oct. 1, '77	$1,759 15	
Maas & Lonstorf's proportion	----	1,073 00
Int. to Dec. 13, '78, 1 y'r 2 mos. & 13 d. at 6%	----	77 43
		11,200 47
Paid Dec'r 13th, 1878	----	3,834 26
		$7,366 21
Interest to July 28th, 1879, 1 y'r 6 mos. 28 days, at 6%	----	659 98
Sales of iron made July 28th, '79	$591 00	
Maas & Lonstorf's proportion	----	360 88
		7,968 15
Paid July 28, '79	----	591 00
Balance	----	$7,377 15
Int. 6% on $7,366.21 from Dec. 13, '78, to July 17, '83, 4 y's 7 mos. & 4 days	----	2,030 62
		$9,396 83

159 EXHIBIT W.

THOMAS MAHER, being by me first duly sworn upon oath to tell the truth, the whole truth, and nothing but the truth, deposes and says:

First question by M. F. TERRELL:

State your name, age, residence and occupation.

Ans. Thomas Maher; I am of lawful age; reside in Cleveland, Ohio, and am in the foundry business.

2nd Ques. How long have you been engaged in the foundry business?

Ans. Since March, 1864.

3rd. Do you remember having your attention called by Mr. Masters, about five years ago, to a lot of Michigan iron lying on Rhodes & Co.'s dock, near the old river-bed?

Ans. I can't say positively as to the time, but think it was four or five years ago that Mr. Masters called my attention to a lot of Michigan iron; it was Willis U. Masters, with Rhodes & Co.

Ques. Did you examine this iron?

Ans. Yes, sir.

Question. State what its quality was; give particulars, so far as you are able.

Answer. We broke several of the pigs, and found them to be black and of burnt appearance—of such a quality that I would not use it for car-wheel purposes; it was not good iron by any means.

Question. How large a pile was there of that iron?

Ans. There was from 800 to a 1,000 tons; it was a large pile of iron.

Question. With what facility could such iron as this be sold as compared with good merchantable iron?

Ans. I could not say; I really don't know what it would be fit for.

Cross-examination by Mr. BALL:

Question. Can you tell what year it was your attention was called to that iron?

160 Ans. No, sir; I could not say.

Question. What time in the year was it?

Ans. That I could not say; I think it was in the fall.

Question. Was it after navigation had closed?

Ans. I think not.

Question. Was it before cold weather commenced?

Ans. Yes; I think it was.

Question. Do you think it was as late as September?

Ans. I could not say positively.

Question. How many pigs did you break?

Answer. Perhaps about half a dozen; at least that many.

Question. Was the full quantity of iron that you speak of as 800 or 1,000 tons of Michigan iron all piled together?

Ans. I think it was.

THOS. MAHER.

Also WILLIS U. MASTERS, — being duly sworn, was examined in chief by Mr. TERRELL, and deposes as follows, to wit:

Question. State your name, age, occupation, and residence.

Answer. Willis U. Masters; I am about 26 years of age; I am in the iron business, and I reside in Cleveland.

Q. What connection have you with the defendants in this case?

Answer. I am employed by them to sell their pig-iron; I have been in pig-iron business about nine years; I have been with the defendants nearly six years.

Question. Do you know the pig-iron in controversy in this suit?

Ans. I was familiar with the pig-iron in controversy.

Question. You may state whether five years ago you called

161 the attention of Mr. Thomas Maher, whose deposition has just been taken herein, to a quantity of pig-iron; and, if so, what iron it was.

Ans. I did; and it was this lot of Michigan iron referred to.

Question. You may state what test, if any, you and Mr. Maher made of this iron.

Ans. Mr. Maher looked at it; he broke it up and examined it carefully.

Question. State what tests you made of it or were made of it in your presence.

Ans. I had tests made of it by melting the iron and having it run against a chill plate to test its chilling properties. We had chemical tests made of it to test its qualities for making steel.

Question. What was the quality of the iron in controversy?

Ans. It had no chilling quality whatever, and was, therefore, unfit for car-wheel uses and for steel; the analysis proved it to be very inferior.

Question. State the appearance of the iron upon inspection.

Ans. In the fracture of the pig it showed a very black appearance, and was without the usual strength.

Question. What name is the iron in controversy known by in the market?

Ans. Michigan iron.

Question. State whether in 1874, here, Michigan iron was a — in this market of established quality.

Ans. It was.

Question. State how the iron in controversy compared in quality and value with the usual Michigan iron.

Ans. It was very inferior.

Question. State how the facilities of sales of the iron in controversy compared with that of Michigan iron of usual quality.

Ans. At that time the market was very much overstocked with charcoal iron, and it was difficult to sell any iron but that of best quality, and as this iron was inferior sales of it were very difficult to make.

162 Question. State the value of this iron as compared with Michigan iron of usual quality.

Ans. It was worth from five to eight dollars a ton less than iron of standard quality.

Question. Taking the prices which the defendants obtained for the iron in controversy, what do you say as to those prices, as to whether they were fair and reasonable or not?

Ans. They were.

Question. In the state of the market and with the quality of this iron, what do you say as to the sales of this iron by the defendants, as to whether it was sold as fast as possible or not?

Ans. It was; the very best of energy and skill was exercised in trying to sell this iron.

Cross-examination by Mr. BALL:

Question. What year was this that you called the attention of Mr. Maher to this iron, and in which you made the tests you speak —?

Ans. It was in the year 1874; the year the iron came down from Lake Superior.

Question. What time in the year was it?

Ans. In the fall.

Question. Can you tell what month?

Ans. I don't remember; I cannot.

Question. Are you sure it was as late as September?

Ans. No, sir; I am not.

Question. Did you — the separate cargoes of that iron, so as to distinguish the one from the other?

Ans. No, sir; the iron was shipped to us as one lot.

Question. You received bills of lading for all of it, and also letters of advice?

Ans. We received bills of lading, but can't say as to the letters of advice.

163 Question. The bills of lading, showed for whose account the iron was shipped, did they not?

Ans. Yes, sir.

Question. When you speak of the iron in controversy, what iron do you mean?

Ans. The Michigan iron shipped from Marquette to Rhodes & Company in 1874?

Question. At the time you made the examination, how much Michigan iron was there on hand on Rhodes & Co.'s dock?

Ans. I made the first examination upon the receipt of the first cargo, and then upon the receipt of every cargo thereafter.

Question. How was the iron classified as to grade?

Ans. The bills of lading will show; I don't remember.

Question. Did you examine all of the several grades?

Ans. Yes, sir.

Question. Was there no good iron among the Michigan iron then shipped here?

Ans. Very little, if any.

Question. Were you here when each cargo was landed at the dock?

Ans. I was here either when each cargo was received or within a few days of its arrival.

Question. Can you say now from memory that you examined each cargo which arrived?

Ans. Yes, sir.

Question. The difficulty with the iron was that it would not chill and was not suitable for steel, was it?

Ans. The grades Nos. 1 & 2 showed by analysis to be inferior for steel and by test to be inferior for foundry purposes and for car-wheels; the other grades usually used for car-wheels had not

164 good chilling quality. Nos. 1 & 2 are very seldom used for car-wheels; they are not hard enough for it; they do not chill.

Question. Did you make the chemical tests yourself?

Ans. No, sir; I had them made by professional chemists.

Question. Was not the sale of this iron suspended for a considerable time on account of orders from the Michigan Iron Company?

Ans. I have no knowledge of such orders, but I do know that from the time this iron was received until it was all sold we were incessantly endeavoring to dispose of it.

W. U. MASTERS.

"EXHIBIT V."

Analysis of Receipts and Sales of Iron.

RECEIPTS.

	No. 1.	No. 2.	No. 3.	No. 4.	No. 5.
1874. Aug. to Nov.	284^{270}	654^{660}	1200^{2170}	85^{1480}	26^{1660} tons.

Sold as follows:

Date.	No. 1.	No. 2.	No. 3.	No. 4.	No. 5.	Time.	Price.		
1874.									
Nov. 4th				33^{2050}	23	30 ds.	35 50	2,162 48	
14				7		4 mos.	35	245	
"			3			"	33	99	
Dec. 10				10		"	32	320	
22				9		"	35	315	Ac. Dec. 29, 1874.
26									
"	290								
Dec.		654^{490}	43^{860}			Cash Nov. 9	28	27,652 87	
" 4			20			Settlement Ap'l 8, '75	26	520	
24			20			" Jan. 20, "	33 50	670	
1875.									
Feb'y 10			10			" M'ch 16, "	29 48½	294 35	Ac. Dec. 1, 1875.
M'ch 23			70			" May 5, "	27 70	1,939	
30			50			" Jun. 9, "	27 65	1,382 50	
Nov. 1			10			" Feb'y 12, '76	24 22	242 20	
1876.									
June 3			10			30 ds., due July 6, '76	24 85	248 50	
9			28^{1120}			" " 12, "	"	708 23	
10			30			" " 13, "	"	745 50	
12			10			" " 15, "	"	248 50	
13			10			" " 16, "	"	248 50	

	14			94 720			" " 17, "	"	2,344 88	Ac. Jan'y 1, '77.
	15			130			" " 18, "	"	3,295 50	
	16			120			" " 19, "	"	2,982	
	24			20			4 mos., Aug. 1, Dec. 4, '76	24 75	495	
Nov.	13			30			30 ds., due Dec. 16, '76	"	742 50	
	14			30			" " 17, "	"	742 50	
166										
Dec.	1			30			30 ds., due Jan'y 2, '77	24 75	742 50	
	4			30			" " 6, "	"	742 50	
	5			30			" " 7, "	"	742 50	
	13			10			" " 15, "	"	247 50	Ac. Jan'y 1, '77.
	20			30			" " 22, "	"	742 50	
	21			40			" " 23, "	"	990	
	Total	290	654 490	909 460	59 2050	23			$52,850 51	
Dec.	22			50			30 ds., due Jan'y 24, '77	24 75	1,237 50	
	23			80			" " 25, "	"	1,980	
	25			40			" " 27, "	"	990	
1877.										
Ap'l	6			10			" due May 9, "	26 15	241 50	
May	31			15 700			" " Oct. 3, "	25	382 81	Ac. Aug. 10, '77.
Jun.	30			6 1840			" " Nov. 2, "	"	170 53	
Oct.	1			89 1410			" " Feb'y 4, '78	20	1,792 59	
	1				23 1600		4 m., " '78	"	54 28	
1879.										
July	28				23 70	3 1660	Cash	23	615 76	
		290	654 490	1200 2170	85 1480	26 1660	Total proceeds of sales		$60,315 48	

167 *Classified Statement of Advances & Disburs-ments, &c.*

F't & ch'g's on b. l.	5,253 36	$5,253 36
Dockage and storage:		
Statement of Dec. 29, '74, sold		805 13
" " 1, '75, "		135
" " 1, '75, unsold		1,204 18
" Jan'y 1, '77, sold		372 84
" " 1, '77, unsold		90 75
" Aug. 10, '77, sold		7 36
" Jan. 9, '78, "		41 55
" " 9, '78, unsold		16 06
" Dec. 13, '78		16 06
" July 28, '79		9 37
Total		$2,698 30
Cash advances to consignors:		
1874. Paid Peter White's fr't	28,037 17	
"	6,933 25	
1877. Maas & Lonstorf	10,000	
1878. " "	3,834 26	
Total cash paid out		$48,804 68
Commission on sales:		
Statement, Dec. 29, '74	769 85	
" " 1, '75	126 20	
" Jan'y 1, '77	530 38	
" Aug. 10, "	19 87	
" Jan'y 9, '78	46 17	
" July 28, '79	15 39	
		$1,507 86
168 Miscellaneous ch'g's & disbursements:		
Dec., '74. To fishing iron from river	2 15	
" analyses	40 00	
" gen'l aver., Tuttle	42 62	
" breaking & sorting (4 charges)	32 00	
75. Rebate allowed Richmond w'ks	40 47	
		157 24

Interest Ac.	Dr.	Cr.
Dec., '74. On fr't & ch'g's paid, 45 d's, 10%	65 66	
" " In ac. amount this date	872 33	271 12
Jan'y 1, '76. " " "	1,179 28	346 08
Dec. 31, " " " "	973 74	626 26
Aug. 10, '77. " " "	186 67	511 75
Jan. 9, '78. " " "		29 56
Dec. 13, " " " "		190 32
Balance		1,302 59
	3,277 68	3,277 68
Dr. balance	$1,302 59	

169 *Recapitulation: Being a Condensed Statement of Whole Business.*

Rhodes & Co. in ac. with the pig-iron in question.

DR.

To total am't rec'd from sales		$60,315 48

CR.

By fr'ts & ch'g's paid		5,253 36
Cash advanced & consignors		48,804 68
Com's on sales		1,507 86
Miscellaneous & disbursements		157 24
Balance on interest ac.		1,302 59
Dockage and storage		2,698 30
Balance		591 45
	$60,315 48	60,315 48
1879. July 28. Balance due Maas & L.	$591 45	

170 EXHIBIT X.

"CLEVELAND, O., *July 28th*, 1879.

Mess. Maas & Lonstorf, Negaunee, Mich.

GENTLEMEN: Enclosed please find account sales of balance of Michigan iron, which was delivered to you by order of Peter White, with Second National Bank draft 10339 on Manhattan Bank — you for $591.45 in full of net proceeds of same, which please acknowledge and oblige,

Truly yours, RHODES & CO."

DEFENDANTS' EXHIBIT 1.

NEGAUNEE, MICH., *Aug't 1st*, 1879.

Messrs. Rhodes & Co., Cleveland O.

GENTLEMEN: Your favor of 28th July, covering ac. of sales of pig-iron held by you for our account and draft for $591.45 is received. We cannot accept the draft as full settlement, as we understand and claim that you owe us a considerably larger sum, and we therefore return the draft.

We have no objection, however, to receiving it upon the account, leaving the question of further indebtedness an open one, to be settled by the suit now pending between us or otherwise.

If you are satisfied to pay us the amount in that way return the draft to us and we will give receipt for the same on account.

Resp'y yours, MAAS & LONSTORF.

171 DEF'TS' EXHIBIT 9.

CLEVELAND, O, *June 29th*, 1877.

Received of Rhodes & Co. ten thousand ($10,000) dollars, on account of net proceeds from sale of Michigan Iron Comp'y's pig-iron, shipped to them during the season of 1874 for account of Peter

White, of Marquette, and retransferred to our account as per his letter of June 10th, 1875, to your firm. The balance of the iron remaining in your hands you will please sell to best advantage and account to us for net proceeds of same.

MAAS & LONSTORF.

172 Know all men by these presents that we, M. A. Hanna, Robert R. Rhodes, James F. Rhodes, are held and firmly bound unto John B. Maas, Nicholas Lonstorf, & John P. Mitchell in the full and just sum of twenty thousand dollars, to be paid to the said John B. Maas, Nicholas Lonstorf, & John P. Mitchell, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 12th day of April, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas lately at a term of the circuit court of the United States within & for the western district, northern division, of Michigan, in a suit depending in said court between said John B. Maas, Nicholas Lonstorf, & John P. Mitchell, plaintiffs, and Marcus A. Hanna, Robert R. Rhodes, & James F. Rhodes, defendants, there was rendered against the said Marcus A. Hanna, Robert R. Rhodes, & James F. Rhodes a judgment for nine thousand one hundred twenty & $\frac{52}{100}$ dollars, and the said Marcus A. Hanna, Robert R. Rhodes, & James F. Rhodes having obtained their writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit, and a citation directed to the said John B. Maas, Nicholas Lonstorf, & John P. Mitchell, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such that if the said Marcus A. Hanna, Robert R. Rhodes, & James F. Rhodes shall prosecute their said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

MARCUS. A. HANNA: [SEAL.]
ROBERT R. RHODES. [SEAL.]
JAMES F. RHODES. [SEAL.]
JAMES PICKANDS. [SEAL.]
FRANK B. SPEAR. [SEAL.]
CHARLES Y. OSBORN. [SEAL.]
W. H. MAYNARD. [SEAL.]

Sealed and delivered in presence of—
ARNOLD C. SAUNDERS.
SAM'L W. TOLSON.
S. HITCHCOCK.
M. L. MARTIN, JR.
GEO. BARNES.

Approved by—

S. L. WITHEY,
Dis'ct Judge.

[Endorsed:] Copy of bond. Filed April 26, 1884. Gad Smith, d'y clerk.

173 The United States of America to John B. Maas, Nicholas Lonstorf, & John P. Mitchell, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, western district & northern division of Michigan, wherein Marcus A. Hanna, Robert R. Rhodes, & James F. Rhodes are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable S. L. Withey, judge of the —, this 26th day of April, in the year of our Lord one thousand eight hundred and eighty-four.

[Seal of the U. S. Circuit Court, Western District of Mich., Northern Division.]

S. L. WITHEY,
Dist. Judge.

174 I hereby acknowledge the service of a copy of the within citation upon me, as attorney for the defendants in error, July 19th, 1884.

DAN. H. BALL,
Attorney for Defendants in Error.

Filed April 26, '84.

GAD SMITH,
Dep. Clerk.

175 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the western district of Michigan, northern division, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you, the judges aforesaid, between John B. Maas, Nicholas Lonstorf, & John P. Mitchell, plaintiffs, and Marcus A. Hanna, Robert R. Rhodes, & James F. Rhodes, defendants, a manifest error hath happened, to the great damage of the said Marcus A. Hanna, Robert R. Rhodes, & James F. Rhodes, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and

proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 26th day of April, in the year of our Lord one thousand eight hundred and eighty-four.

[Seal of the U. S. Circuit Court, Western District of Mich., Northern Division.]

HENRY M. HINSDILL,
Clerk of the Circuit Court of the United States for the Western District, Northern Division, of Michigan.

Allowed by—

S. L. WITHEY,
Dist. Judge.

[Endorsed:] Filed April 26, 1884. Gad Smith, dep. clerk.

176 WESTERN DISTRICT OF MICHIGAN, *Northern Division,* } ss:

I, Gad Smith, deputy clerk of the circuit court of the United States for the sixth circuit and western district of Michigan, northern division, do hereby certify that the within and foregoing are true copies of the files and records in the cause herein entitled; that I have carefully compared the same with the originals thereof now remaining on file and of record in my office, and that they are correct transcripts therefrom and of the whole of such originals, and that the original bill of exceptions, citation, and writ of error filed in said cause are hereto appended.

In witness whereof I have hereunto set my hand and the seal of said court, at the city of Marquette, this first day of May, A. D. 1884.

[Seal U. S. Circuit Court, Western District of Mich., Northern Division.]

GAD SMITH,
Deputy Clerk.

177 UNITED STATES OF AMERICA:

Supreme Court.

MARCUS A. HANNA, ROBERT R. RHODES, JAMES F. RHODES,
Plaintiffs in Error,

vs.

JOHN B. MAAS, NICHOLAS LONSTORF, JOHN P. MITCHELL,
Defendants in Error.

Marcus A. Hanna, Robert R. Rhodes, and James F. Rhodes, plaintiffs in error, claim of John B. Maas, Nicholas Lonstorf, and John P. Mitchell, defendants in error, and say that heretofore, to wit, on July 20th, 1883, there was rendered in the circuit court of the United States for the western district and northern division of the State of Michigan a judgment against them and in favor of said defendants in error for $9,120.52 and costs. The proceedings or a transcript thereof in which said judgment was so rendered are herewith filed.

And these plaintiffs in error say that in the said proceedings and record there is error, in this, to wit:

178 1. The circuit court erred in receiving evidence, and permitting the same to go to the jury, offered by defendants in error and objected to by plaintiffs in error.

2. The circuit court erred in rejecting evidence offered by plaintiffs in error and objected to by defendants in error.

3. The judgment of said circuit court is contrary to, and not supported by, the law of the land.

4. The circuit court erred in its charge to the jury, as excepted to at the time, and generally.

5. The circuit court erred in refusing to charge the jury as requested by plaintiffs in error and in charging the jury as requested by defendants in error.

6. The circuit court erred in overruling the motion for a new trial.

7. The judgment rendered by said circuit court was not and is not supported by sufficient evidence.

8. Said circuit court erred in holding that plaintiffs in error were liable for a greater amount than the net proceeds of the iron consigned to them for sale.

9. Said circuit court erred in holding that the alleged contract of plaintiffs in error obliged them to pay an amount greater

179 than the net proceeds of the property consigned to them for sale.

10. Said circuit court erred in many other respects in its charges and holding upon the trial of said action.

And the plaintiffs in error say they have been injured and prejudiced by reason of the errors aforesaid, and ask that said judgment may be reversed, and that they may be restored to all things lost thereby, and for other proper relief.

E. J. ESTEP,
Att'y for Plaintiffs in Error.

180 [Endorsed:] Supreme Court of U. S. Marcus A. Hanna & others *v.* John B. Maas & others. Petition in error. E. J. Estep, att'y.

Endorsed on cover: W. Michigan C. C. U. S. No. 271. Marcus A. Hanna, Robert R. Rhodes, and James F. Rhodes, plaintiffs in error, *vs.* John B. Maas, Nicholas Lonstorf, and John P. Mitchell. Filed August 2d, 1884.

122-24

Supreme Court of the United States.

No. 271.

MARCUS A. HANNA ET AL.

vs.

JOHN B. MAAS ET AL.

ERROR.

BRIEF OF PLAINTIFF IN ERROR.

E. J. ESTEP,
Attorney for Plaintiffs in Error.

JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

No. 271.

MARCUS A. HANNA ET AL.

vs.

JOHN B. MAAS ET AL.

ERROR.

BRIEF OF PLAINTIFF IN ERROR.

There are three counts in the declaration. The second is based upon alleged shipments of pig-iron by the plaintiffs to defendants, as factors and commission merchants, for sale; proceeds, less expenses, to be paid to plaintiffs.

The third count is like unto the second, but counts upon shipments made by the First National Bank of Negaunee and proceeds assigned to plaintiffs. As to these, the testimony shows the sale and payment of the proceeds. In fact, such accounting was not disputed; nor was any recovery had upon either the second or third count, and the same will not be again referred to.

The first count represents that on August 22, 1874, the plaintiffs in error were engaged in the business of selling pig-iron on commission in Cleveland and making advances thereon; that in consideration that plaintiffs would deliver to them for sale on commission a quantity of "Michigan charcoal pig-iron," which the plaintiffs held in pledge for themselves and the bank for advances to amount of $25 per ton, promised the plaintiffs, who were represented by Peter White, as their agent, that they would receive the iron to the amount of 2,000 tons, and *would assume and pay* the said advances to the amount of $25.25 per ton, upon receipt of the iron, and, in addition, freight and dockage to the amount of two dollars per ton; that the pig-iron was shipped and delivered to defendants, *for sale upon commission in accordance* with said agreement, to the amount of 2,000 tons in quantity and $60,000 in value, whereby defendants became and were liable to pay plaintiffs advances to the amount of $25.25 per ton, amounting to $50,000.

The contract upon which the petition is based, page 68, is as follows:

"MARQUETTE, MICH., *Aug.* 22, 1874.

"PETER WHITE, Esq.

"DEAR SIR: We will advance $25.25 per ton on 500 to 1,000 tons Michigan charcoal pig iron when delivered at Cleveland.

"Very truly yours, RHODES & Co.

"We will pay lake freight and dockage, not to exceed $2 per ton, on the above, and increase the amount of iron to 2,000 tons.

"RHODES & Co."

The circumstances under which the paper was made, as shown by the evidence, were as follows:

That Rhodes & Co., of which firm M. A. Hanna was a member, were commission merchants for the sale of pig-iron, &c., at Cleveland, and commenced business in 1867; had sold iron for Peter White several years (page 34). Rhodes & Co. had no knowledge that plaintiffs or the bank had any interest in the iron until January, 1875 (pages 51 and 52). The bills of lading were all in the name of Peter White. The iron was all delivered before January, 1875. The last shipment was made in November, 1874 (page 20). The contract was made and signed a. m. August 22, and the supplement in the p. m. (page 18). There is no evidence that Rhodes & Co. knew of the liens or advances of plaintiffs or the bank at or about the time the contract was made. The supplement was made at the request of White (page 18). All the iron was shipped under the written agreement, in the name of and by Mr. White, and the iron was shipped by White to be sold on commission (page 19). In fact, White, the bank, and plaintiffs had each made advances to the Michigan Iron Co. upon different portions of the iron, and did not jointly have liens upon the whole. All the iron was sold in good faith for the fair market prices; not finally closed out until 1879 and money paid over—that which was in the shape of advances to Peter White, and that in the shape of proceeds to the plaintiffs.

Under these circumstances what is the legal construction of the contract of August, 1874? What were the rights of the parties? Judge Withy says, page 23, upon the question of the admissibility of evidence in referring to the paper, "and that is for an advance of money, which would not indicate *that it was a loan.* * * * On the face of the instrument it is that the defendants were to advance to him

$25.25 per ton, and that does not mean a loan." In his overruling of the motion for a new trial, page 13, he says:

"The real transaction was an agreement to loan to the Michigan Iron Company the sum of $25.25 per ton on not exceeding a given quantity of pig-iron, then existing, payable to Peter White upon the credit of the company with the iron as security and with irrevocable power to sell."

In his charge to the jury, commencing on page 62, he says:

"The contract which has been read in your presence was an obligation on the part of these defendants to receive this iron as *commission merchants*, and sell it for account of those special property owners and the general property owners, the special property owners being those who had a lien upon it, and the general property owners being the Michigan Iron Company, these defendants agreeing to advance $25.25 a ton, in addition to some charges for freight, dockage, etc., which would be going to the special property owners or those having a lien upon the property."

On page 64 the court says:

"Notwithstanding the contract of the defendants was for $25.25 per ton as an advance, the plaintiffs would not be entitled to recover any greater amount than the lien which they had upon the property shipped. I understand by the testimony that these plaintiffs and the bank advanced about $20 a ton, instead of $25.25, and, in no event, could they recover more than the lien and interest."

On page 65 he says:

"Ascertain if there was such merchantable iron in lots, and what it comes to at not exceeding $20 per ton, and interest on that from the time it should have been paid and was not paid, less the payments which have been made, and the balance would be the damages which the plaintiffs are entitled to recover if you find there is any balance."

On page 67, Mr. Maynard, counsel for defendants, said to the court:

"We desire to preserve an exception to the general refusal of the court to charge that, if they find the relation of consignor or consignee or consignor and factors between these defendants and White as the agent of the plaintiffs, then, in such event, there can be no recovery in this case upon the first count in this declaration."

"The COURT: I did not deem it necessary to say anything to the jury on that topic. You may have an exception."

"Mr. MAYNARD: We desire to note an exception to each refusal of the court to charge as requested."

"The COURT: I think it was understood what I said about the first exception you just mentioned. Such would be the rule as you claim it. If these defendants were dealing with this property simply as commission merchants, selling it for account of the owners, special or general owners, in the absence of a contract to make advances—if they made advances beyond the value of the iron, beyond the amount which they could sell it for, using good faith in the disposition of it, they would be entitled to recover back of the owners, general or special, or for whose account they sold it, the excess over which they sold it for. But, in this instance, we say that there was a contract obligating these defendants to pay an advance, to make an advance, and these parties, who had a special lien or claim upon the property or special interest in it, parted with the property on the strength of this contract, and, therefore, the rule would not be that the defendants could recover back anything from them."

This is what the court said about it to the jury and to counsel during the progress of the trial. We think it substantially means that the law governing the relation between the owner and the commission merchant, consignee for sale, does not apply. That, although the property was shipped to the commission merchant for sale by the lien holders, without the intervention of the general owner, defendants were bound by the terms of the contract to pay off the full amount of the liens, whether the property pledged was worth the

amount or not. The verdict is for $9,120.52, and which amount is over and above all advances and proceeds, and is a clear loss to defendants, if compelled to pay. This construction we think is wrong.

The contract is in the shape of a proposition. It is not accepted otherwise than by the acts of the parties—that is, the iron was shipped, was received at Cleveland and sold by the defendants, and proceeds fully paid, less advances and expenses. By placing the goods in the hands of the factor, the pledgees did not lose their lien nor divest themselves of their property. The factors were their agents, and they had a right to reclaim at any time before sale, upon repayment of advances and charges. This, if the property was delivered to the defendants as factors, entered into the contract and was part of it (11 How., 209). Defendants were bound to obey instructions and to account to him from whom they received the goods for the proceeds, and to discharge all the duties of the employment with proper care, skill, and fidelity. This is a fair statement of the law, and defines the rights and duties of the parties. This proposition says nothing about liens or special owners. It is directed to White. It fixes the amount of advances, and all else is left to implication and the law. Take in the situation and circumstances, and the implication is: Take this property as commission merchants, sell it pursuant to law, and account for proceeds. It was not the intention that $25.25 should be advanced if the property was not worth the money. There was an implied condition that it should be advanced if the proceeds would secure it, and not otherwise. It does not contain, by implication or otherwise, any stipulation to pay the debt of the Michigan Iron Company to plaintiffs

and the bank. They are not known in it. Yet this suit is brought on this contract to recover $10,000 more than the proceeds, and recovery is authorized by the court on the ground that by this proposition the defendants assumed these liens or agreed to loan the Michigan Iron Company money enough to discharge them. This is assumed because the advances were fixed at a sum that would have paid them.

Suppose Peter White had been the absolute owner of the property, and had taken this agreement and shipped the property; that it had been fairly sold, and entire proceeds paid over, and it was then found that the proceeds fell short of the stipulated advances $10,000. Could he have sued and recovered because advances at the stipulated rate would have amounted to $10,000 more than the proceeds?

The theory of this case is that White was the agent of plaintiffs. They therefore put the property in the hands of defendants to be sold on their account, and cannot enforce claims that White could not have done. It is a matter of agency as well as factor and consignor. Suppose plaintiffs had put the property in the hands of a common agent, who agrees to advance $25 a ton, and handle and sell the property with the view of getting his pay out of the proceeds. Before the advances are all made the property has been sold and falls far short of the promised advance. Could the principal sue and recover from his agent the difference? The sole consideration for the advance is the proceeds of the property. That has failed; the bottom has fallen out. Yet the court held that this recovery could be had under this contract. The declaration shows that plaintiffs were the principals and defendants were the agents, and the court places

it upon the ground that defendants by this paper assumed the debt of the Michigan Iron Company, and if the amount is in excess of the proceeds collect it of the Michigan Iron Company. The theory of the declaration is that defendants were obliged to pay the $25.25 without regard to the value of the property, although denominated as advances upon the property. This might be true if the defendants were purchasers, because they agreed to pay that price for it. They were not purchasers; they were agents.

The charge of the court proceeds, and the verdict was rendered upon the theory that the lien-holders, the shippers, must be paid, whether the property was worth the money or not. They held the property in pledge, and, we suppose, with the consent of the pledgors, gave it to the factors for sale. Can they recover more from their factor than the value of their pledge, fairly sold, and that, too, after all the proceeds have been fairly accounted for? The court and jury said they could, and to reverse this holding we have appealed to this court.

2.

There are various questions which ought to have been made, but which the record does not, probably, show to have been excepted to at the time, so as to make them available before this Court.

The error which we have heretofore considered, and the one which we now discuss, were excepted to, and, we believe, are in proper shape for review by this Court.

This was an action at law to recover damages for non-performance of a contract. On page 32 commences the testimony of Richard Blake. The witness brought in a compu-

tation made by himself. In this he sets forth the shipments of iron, which, he says, he obtained from the way-bills and from a deposition of M. A. Hanna. This testimony shows that he figured sales and net proceeds, and undertook to divide the proceeds among the several special owners, and made out a balance due plaintiff of $9,259.61, which is about the amount of the verdict, less interest between the first day of the term and the day to which he computed. This paper, thus made, was offered, was objected to, and was read to the jury. (See page 33.) The papers or computations are marked "Exhibits "X" and "Y," on pages 97, 98, and 99. The attention of the court was called to it while charging the jury, and they were informed that, if they found for the plaintiff, and could be aided by that computation, they might use it. What was thus said is not specially excepted to, although apparently at variance with the views of Mr. Maynard. We do not know of any rule which, in a case at law, will permit a paper or statement to be so made up by an accountant, and then read to a jury as evidence that may be considered by them in case they find for the plaintiff. If the question is properly before the Court, we ask a ruling upon it.

3.

The advances and net proceeds, except $591.45, paid February 28, 1879, appear on page 41, and, with the $591.45, make $42,462.88. The iron was shipped in different cargoes, and the advances made to White were treated by defendants as made upon all the shipments as a whole, and the court was asked to charge the jury that, up to the time defendants had actual notice of the interest of Maas and Lonsiorf, or

the plaintiffs in the consignment, they were entitled to deal with White as the absolute owner upon the bills of lading, and to charge against the whole consignments any advances made to him and expenses proper to be charged. (See page 66.) This the court refused to charge, (same page), for reasons stated. On page 68 there is an exception which will cover this. We think this was error.

The testimony shows that the three drafts, dated September 3, September 16, and October 27, 1874, (see page 41), and amounting to $28,037.17, were paid to White. Why should it not be charged against the whole consignment, unless at the time of payment defendants had notice that different portions belonged to plaintiffs? White was their agent, and, if he got money that belonged to them, was able to respond. We think the charge ought to have been given.

The petition in error, or rather assignment of errors, is on page 110. We rely principally upon the eighth and ninth errors assigned. They embrace the construction of the contract, and the assumed right to recover more than the net proceeds of the property.

Respectfully submitted,

E. J. Estep,
Attorney for Plaintiffs in Error.

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SUPREME COURT OF THE UNITED STATES.

October Term, 1886.

No. 271.

MARCUS A. HANNA, ROBERT R. RHODES, AND JAMES F. RHODES, PLAINTIFFS IN ERROR,

vs.

JOHN B. MAAS, NICHOLAS LONSTORF AND JOHN P. MITCHELL, DEFENDANTS IN ERROR.

STATEMENT OF CASE AND ARGUMENT OF DAN H. BALL, FOR DEFENDANTS IN ERROR.

UNITED STATES OF AMERICA.

THE SUPREME COURT.

MARCUS A. HANNA, ROBERT R. RHODES, and JAMES F. RHODES,
Plaintiffs in Error,
vs.
JOHN B. MAAS, NICHOLAS LONSTORF, and JOHN P. MITCHELL,
Defendants in Error.

The bill of exceptions in this case is framed by putting in all the testimony, documents, etc. as exhibits, and they are brought together with little regard for order of time or subject. There will be found several exhibits with the same mark, in some cases nothing to indicate the positions where they belong respectively, except the subject matter. This arises from the fact that there are two depositions in evidence, designated as "Exhibit D," (Record p. 69) and "Exhibit E," (Record p. 77) to each of which, other exhibits were attached.

In order that the case may be understood, it seems necessary to arrange the letters, documents and facts, as shown by the testimony, in chronological order, stating in proper order what the plaintiffs claim to be shown by the proofs, making references to the printed record. This task I have undertaken, in the following,

STATEMENT OF THE CASE.

During the year 1874, the Michigan Iron Company was a corporation, engaged in the manufacture of pig iron, in the county of Marquette, state of Michigan, and borrowed money from the First National Bank of Negaunee in said county, and also from the defendants in error, Maas, Lonstorf and Mitchell, who were plaintiffs below.

Maas, Lonstorf and Mitchell loaned said company money as follows:

June 22, 1874, $2000, at 4 months.
June 17, 1874, $2000, at 4 months.
July 1, 1874, $4000, at 4 months.
June 27, 1874, $3000, at 4 months.
June 20, 1874, $1000, at 4 months.

The First National Bank of Negaunee loaned the Iron Co. as follows:

May 29, 1874, $5000, at 90 days.
July 5, 1874, $1000, at 3 months.
April 5, 1874, $7621.36, at 4 months.

Besides this there was another loan made by the bank, represented by a note that was surrendered when paid by advances made by the defendants below. (Record p. 26.)

Notes were given by the iron company to said bank, and Maas, Lonstorf and Mitchell for said amounts, at the above dates, bearing interest after maturity at ten per cent per annum. Record pp. 25-26.)

For the face of these notes the payees held pig iron as collateral, which had been turned out to them by the Michigan Iron Company, at the rate of $20 per ton. (Record p. 16. Admission of Maynard, counsel for defendant below.)

Note. These notes are designated as exhibits in the testimony, but are not made exhibits to the bill of exceptions, because the admission of counsel concedes the lien.

The total amount of pig iron turned over to Maas, Lonstorf and Mitchell and the Negaunee bank, as collateral, and shipped to the defendants below, was $1373\frac{322}{2240}$ tons. (See testimony of White, record p. 19, and exhibit C. record p. 69.)

The plaintiffs below and the bank held this iron, as security for their loans on August 22, 1874. On that day, Peter White, who also held a quantity of pig iron of the Michigan Iron Company as collateral for loans he had made, made a bargain with defendants below, as the firm of Rhodes & Co., commission merchants, of Cleveland Ohio, to send the iron he so held, 500 to 1000 tons, to them to sell for

account of the owner, and to advance to him his lien, to the amount of $25.25 per ton.

The arrangement was, that on shipping the iron, Mr. White was to forward to Rhodes & Co. paper of the Michigan Iron Company, due in four months, for the amount of the advance and interest added. Rhodes & Co. were to discount the Michigan Iron Company's paper, and with the proceeds pay Mr. White's draft for the amount of the advance, which would be just equal to the proceeds of the note. (Record p. 17.) Mr. Hanna asked Mr. White if he would endorse the "drafts," (evidently meaning the Michigan Iron Company's paper), but Mr. White declined to do so, and stated that he would not be liable in any shape whatever. (Record pp. 57-58).

Mr. Hanna then gave Mr. White a memorandum in writing, as follows:

"*Marquette, Mich., Aug. 22, 1874.*

"PETER WHITE, Esq.

DEAR SIR: We will advance $25.25 per ton on 500 to 1000 tons Michigan charcoal pig iron when delivered at Cleveland.

Truly yours,

RHODES & CO."

(Record p. 17 and Exhibit B. p. 68.)

Soon after on the same day word was sent to Mr. White to come to the office of the Michigan Iron

Company, which he did. He found there Mr. Hanna, several officers of the company, and probably Mr. Maas; he was there told, in the presence of Mr. Hanna, that the same arrangement had been made in regard to the Michigan Iron Company's iron on which the Negaunee bank, and Maas, Lonstorf and Mitchell held a lien, and that it was to be shipped in White's name, to which he consented, and on his suggestion there was added to the memorandum before given to Mr. White, the following, which was intended to cover the iron so held by these other parties:

"We will pay lake freight and dockage, not to exceed $2.00 per ton, on the above, and increase the amount of iron to 2,000 tons.

RHODES & CO."

(Record pp. 17-18, and Exhibit B. p 68.)

In pursuance of this arrangement Mr. White shipped to Rhodes & Co., at different times during the remainder of the season, a quantity of Michigan pig iron held by him as collateral, as well as that held by plaintiffs below, and the Negaunee bank.

The iron shipped by Mr. White, and noted on bill of loding as being for his account, and so received by Rhodes & Co., according to Mr. Hanna's testimony, (see deposition, record p. 71, and Exhibit T. record pp. 83-86), was 1976 tons and 1900 pounds. Some Michigan iron was also shipped for account of S. Shoch.

The iron was billed, as shipped by the Michigan Iron Company, and noted on the bill of lading as being for account of Peter White and Samuel Shoch, who were entitled to the advances. (See deposition of M. A. Hanna, record p. 71.)

It was all placed by Rhodes & Co., on the Mich. Iron Co.'s account, and was all accounted for together as Mich. Iron Co.'s Iron.

Of this amount, there was of iron held by the Negaunee Bank, and Maas, Lonstorf & Mitchell, $1373\frac{223}{224}$ tons, as shown by the statement made by Mr. White, (see his testimony, record p. 19, and exhibit C. referred to as part of his testimony, Record p. 69.) Comparing this statement of Mr. White with the statements of Hanna, on pp. 83 and 86 of record it will be seen that they agree in in the date of bill of lading and name of steamer by which shipments were made, but differ slightly as to amount of the several numbers of iron—owing to the fact that it would be sorted somewhat differently, at the point of shipment and the point of destination. The quantities however are substantially the same in both statements.

On shipping the cargo of $250\frac{230}{240}$ tons Aug. 29th, by the City of Duluth, Mr. White, under date of Aug. 30th, wrote Rhodes & Co. as follows: (See Record p. 75).

"Marquette, Mich. Aug. 30, 1874.

Messrs. Rhodes & Co., Cleveland.

I have shipped to you to-day, per city of Duluth,

about 250 tons, Mich. No. 3, and I shipped by Atlantic, 27½ tons, and by Craig, 194½ tons, and by St. Paul, 10 tons, all "Michigan" iron. I am also shipping you Bancroft iron. Please be careful and not mix it with "Michigan".

These shipments were all iron of the Negaunee Bank, and Maas, Lonstorf and Mitchell, as will be seen by comparison with White's statement, "Exhibit C. p. 69"

On Sept. 3. 1874, Mr. White, having made two shipments of Michigan iron, on which he himself had a lien—on which Maas, Lonstorf & Mitchell had no claim, to-wit, by the Atlantic, Aug. 24th. and the Winslow Aug. 28th, (see Hanna's statement p. 83.) wrote Rhodes & Co. as follows: (Exhibit 2 Record p. 75).

"I have shipped you, under arrangements made with your Mr. Hanna, two cargoes by Winslow and Atlantic, a little over 508 tons, Mich. pig iron, and at $25.85 which is $25.25, dockage paid here 50c., and insurance 10c., and it was shipped at $1.40, which makes $27.25, according to agreement with Mr. Hanna. I have drawn on you to-day for $13,-131.80 in favor of Jos. Colwell, cashier, and have attached Mich. Iron Co.'s draft on you, 4 mos., $13.566 as you desired. Please honor the draft and oblige. I have made other shipments to you, *but another party is interested in those, and these are mine.*" (The same letter appears as exhibit G. to another deposition, Record p. 93).

This last clause refers to the Maas Lonstorf and Mitchell iron, shipped as above stated.

To this letter, Rhodes & Co., answered under date of September 5th, (exhibit I6, Record p. 78) that the *draft of Michigan Iron Co.* came without their endorsement (it being drawn payable to the Co.'s own order) and was therefore returned.

They say some of the No. 3 iron is hardly up to standard for that grade, and the market is demoralized, and that it will be necessary for the *Mich. Iron Co.* to put up more iron. They say they will pay Mr. White's draft as soon as the Mich. Iron Co.'s draft is returned indorsed. The draft was paid Sept. 11th, (see Rhodes & Co.'s act. Record p. 84), and was charged to the Michigan Iron Company.

Sept. 10th, Mr. White wrote Rhodes & Company in reference to the iron shipped, giving a list of all "Michigan" iron shipped to that date, (exhibit K, Record p. 93). He says, "please keep the iron marked on the list 'lot No. 1,' separate from that marked 'lot No. 2,' *as the latter is in my hands for account of other parties as well as myself.*" "List No. 2" (see record p. 94) corresponds with the statement of Mr. White (record p. 69,) and "list No. 1", corresponds substantially with two of the shipments shown in Hanna's statement (record p. 83).

This letter and list were received by Rhodes & Company, and on Sept. 14th, they acknowledge receipt, (exhibit J. record p. 78). They say "the lot marked 1 for your account is not piled separately from the other, *but we will account to you*

separately for it, if you wish. We supposed when we paid you the advances, the account was Michigan Iron Company.

On the 11th of Sept. Mr. White shipped by the Winslow about 134⅓ tons of the Maas, Lonstorf and Mitchell iron (see statement, record p. 69). Sept. 16th he wrote Rhodes & Company as follows: (Exhibit L. record p. 94).

"RHODES & COMPANY, *Cleveland.*

DEAR SIRS: I shipped you by

St. Paul	9–2190 tons
Craig	194–940 "
Duluth	250–2210 "
Atlantic	32–540 "
	487–1400 "

Against which I enclose to bank, Michigan Iron Company's draft on you at 4 months, $12770, with my draft attached, $12358.12, which please honor."

Sept. 21, Rhodes & Company acknowledge receipt of this letter, and write that they have declined to honor the draft of the Michigan Iron Company, till they could have more margin on the iron. That they have written to Mr. Ripka (the manager of the Michigan Iron Company,) in regard to it, and must delay payment until *he will arrange* to give them a margin. They figure that on the acceptance of this Michigan Iron Company draft, they will have advanced, including freight and

charges, $26.20 on the Michigan iron received, and they say they cannot advance more unless Mr. Ripka furnishes more iron (Exhibit M, record p. 79).

On the 24th of September, (see Exhibit No. 1, record p. 82), they write Mr. White in answer to one from him of the 21st (which is not in evidence) explaining further why they did not pay the draft. Mr. White had evidently charged them with going back on their agreement. They don't deny the agreement, but say they do not propose, by advancing money, to put their "foot in it." They complain somewhat of the iron sent, but say they will pay the draft when it comes back.

The draft of Mr. White for $12,358.12 was paid by Rhodes & Co., September 26th, and charged to the Michigan Iron Company. (See Hanna's statement, record p. 84). It was paid over to Maas by Mr. White, and applied on the paper held by the Negaunee bank. (Maas' testimony, record p. 26.)

October 24th Mr. White writes to Rhodes & Co., as follows: (Exhibit O, record p. 94).

"I shipped you to-day, by propeller Winslow, freight $2.00 per gross ton of 2268 lbs, all No. 3 Michigan pig iron — 654320 lbs.
228980 "

883300, nearly 400 gross tons. Then you have 2 or 3 cargoes previous *upon which I have not drawn for anything.* This 228,980 lot belongs to me individually, personally, and I wish to draw *against it.* Please pay my draft and greatly

oblige me. It is 101 tons, say at $25.25 would be $2,547.25, and would be $2632.

[The illegible passage undoubtedly relates to the Michigan Iron Company's draft at 4 months, which, discounted at 10 percent would be $2632.]

I will send you on 26th inst, the Michigan Iron Company's note for the $2632, and draw on you at sight for $2,547.25, and hope you will honor the draft."

Rhodes & Co. acknowledge receipt, (Exhibit P., record p. 79), Oct. 28, 1874, in which they say they will pay the draft, but complain of the iron, and say they would not advance any more than $20 per ton, and then only with the privilege of selling at what it is worth, cash. They add, "*We will not* advance any more money on what we have in yard, after paying your draft, and not over $20 on any more to come."

November 3d, Mr. White writes Rhodes & Co., relative to the shipment made by him that day, of Michigan iron (Exhibit Q, record p. 95) all of which was Maas, Lanstorf and Mitchell iron, (See White's statement, p. 69). There is an error in the printed record as to the quantity. It should read:

Michigan No 1	.70– 340	tons
" " 2	.80–1400	"
" " 3	.27–1684	"
" " 4	. 8– 836	"

This is the last shipment that was made. Reviewing, we see that Mr. White drew precisely the amount per ton that was specified in the agreement against specifie shipments as follows:

Against the shipment by the Winslow, Aug. 28, and that by the Atlantic, Aug. 24, $13,131.80, (exhibit G. record p. 93)

Against the following shipments.

St. Paul, Aug. 22. Craig, Aug. 26th. Duluth, Aug. 29th,

Atlantic, Sept. 7, $12358.12, (exhibit O. record p. 94.)

Against that portion of the shipment by Dulath, of ~~Nov. 7~~ Oct 24 that belonged to Mr. White individually, personally—228,980 pounds—$2547.25.

The first and last were upon the Michigan iron held by Mr. White, and *all the Michigan iron on which he had a lien*, that was shipped to Rhodes & Company.

There still remained in the hands of Rhodes & Company, of Michigan Iron subject to the lien of the Negaunee Bank, and Maas, Lonstorf and Mitchell, against which nothing had been drawn—*upon which Rhodes & Company had made no advances*, the following cargoes:

Sept. 14, by Winslow	No. 2,	54 tons	1450 lbs.
	" 3,	79 "	2100 "
" 21, " Atlantic	" 1,	93 "	1582 "
" 25, " Winslow.	" 1,	180 "	362 "

Oct. 24,	" Winslow.	"	3, 288	"	1136 "
Nov. 2,	" H. B. Tuttle ..	"	1, 70	"	340 "
	..	"	2, 80	"	1400 "
		"	3, 27	"	1684 "
		"	4, 8	"	835 "
Total			883	"	1929 "

or in round numbers 884 tons. (See White's statement, record p. 69).

Rhodes & Company had also advanced on the Michigan Iron shipped for account of S. Shoch, $6933.25, (Maas, Lonstorf, Mitchell and White had no connection with the Shoch iron or advances.) Refering to Hanna's statement, (record p. 83), we find there were three cargoes of the Shoch iron, in all 273 tons—1100 lbs. The advance to Shoch then amounted to $25.37 per ton.

These advances to S. Shoch were charged to the Michigan Iron Company's account, and Rhodes & Company claimed to hold them. as well as the other advances made, as a charge against all the Michigan iron indiscriminately.

(See deposition of M. A. Hanna. in answer to eighth interrogatory, record p. 71.)

January 8, 1875, Mr. White wrote Rhodes & Company, (exhibit R. record p. 95) asking for a statement of Michigan Iron Company iron sold for his account separately from that sold for account of S. Shoch.

January 12, Rhodes & Company answered; (Exhibit I, record p. 80). They say they have not kept the shipments separate. They propose to credit

a portion of their sales to iron shipped account of Samuel Shoch, and say that price on sales of the amount of iron received for account of Shoch will not amount to the advances made.

May 22, 1875, Rhodes & Company write Peter White, (exhibit K. record p. 81) in reply to a letter from White requesting them to make the advances they agreed to on the rest of the iron, declining to comply with his request. In this letter and also in a letter of January 12, (exhibit S. record p. 80) is a reference to a suit by "E. T. & Company". Edwards Townsend & Company, had attached the iron as the property of the Michigan Iron Company and finding that the lien upon it was as much as it was worth, had withdrawn their suit.

June 4, 1875. (exhibit V. record p. 96) Rhodes & Company write F. E. Snow, cashier of First National Bank of Negaunee. (see Maas' testimony, record p. 27) in answer to a letter from him, "that the amount of Michigan iron in our hands at present time is 1014 tons, on which we have advanced $14,746.43, which does not include our charges for commission, dockage and interest. For further information we must refer you to Mr. Peter White."

It will be seen by the statement of Hanna, including the account of sales, and account with the Michigan Iron Company, (record pp. 83-87) that all the "Michigan" iron, shipped for account of Shoch as well as White, was placed in one account, and the advances were charged against the entire amount of iron in gross, instead of against the specific cargoes, as they were drawn. The $14,746.43 was the

balance on the whole advances made, over and above receipts on actual sales made at that time. At the close of the year 1875, according to the account, (record p. 87) they still claim due them, $14,147.51.

Mr. Maas went to Mr White "for further information", and Mr. White gave it in the shape of an affidavit, endorsed on the letter (Exhibit V. record p. 96) saying that Rhodes & Co. had made no advance, whatever, upon 884 tons of "Michigan" pig iron, shipped there in the season of 1874, and that Lonstorf and Maas were entitled to the iron or its proceeds.

Mr. White, also, on the 8th of June, 1885, gave Mr. Maas a letter to Rhodes & Co., (Exhibit W. record p. 97), requesting them to transfer the 884 tons of iron to the account of Maas and Lanstorf.

Maas took this lettter to ~~Rhodes~~ Snow, with Mr. White's affidavit endorsed thereon, ~~He~~ showed both to Rhodes & Co.; and asked to have the promised advance on the 884 tons paid them, or to have the iron turned over to them. (See record pp. 27-28.) Rhodes & Co. refused claiming the entire balance of advances they had made on "Michigan" iron, as a lien on all the iron they had left.

Rhodes & Co. continued to make sales of the iron, making charges against it, for interest and expenses, and crediting the receipts from sales.

June 20th, 1877, they paid to Maas & Lonstorf $10,000 (See of record p. 92 and receipt, exhicit 9, record p. 107), and Dec. 2d, 1878, they paid them the further sum of $3,834.26.

July 28th, 1879, Rhodes & Co. remitted to Maas & Lonstorf by letter (exhibit X record 107), a draft for $591.45 as full payment of the balance due them, which they declined to receive as full payment, and retured by letter of Aug. 1st, 1879 (exhibit No. 1, record p. 107). Rhodes & Co. claim that they returned it to plaintiffs, to be received by them upon the account, leaving the question of further indebtedness an open one, in accordance with plaintiffs letter of Aug. 1st. (record p. 43), and plaintiffs deny that it was ever sent to them again (record pp. 30, 60 and 61).

The claim of the First National Bank of Negaunee was assigned to to the plaintiffs below, before suit was brought, and this suit was for all the balance due the plaintiffs and the bank, on the advances to be made on the iron.

The amount of the lien—$20 dollars per ton—that the plaintiffs had on the 884 tons of iron, amounted to $17,680, and the court instructed the jury that they could not allow more than that amount, with interest, deducting the payments that had been made to the plaintiffs, although the amount due on the notes was considerably more than that.

There was considerable testimony in relation to the quality of the iron, but that question was submitted to the jury with proper instructions, and can cut no figure in this investigation.

A computation was introduced and sworn to by Mr. Maynard, attorney for defendants below, (record p. 57) *as a computation*, upon his theory.

The theory of his computation is not in accordance with the evidence. It is found on pages 104 to 107 of the record.

ARGUMENT.

I.

The principal error claimed in this case is that the trial judge instructed the jury that the contract of Rhodes & Co. to advance a certain amount per ton on the pig iron to be shipped to them, was an obligation to advance that amount to the persons having a special property in the iron.

The position taken by the defendants below was that they were to receive the iron and sell it for the account of the plaintiffs, and that whatever they should advance was a loan, to be paid back to them with interest, out of the proceeds of the iron, and that if there should not be sufficient of the proceeds, then the parties to whom the advance was paid, would be liable to Rhodes & Co. for the deficiency; in fact that the advances would be a debt of the persons receiving them to Rhodes & Co. from the time of their reception by them until they should be paid, either by sales of iron or otherwise.

There is no foundation for this claim. The iron was the property of the Michigan Iron Company. Rhodes & Co. made arrangements with that company to sell the iron for it on commission; but

plaintiffs had a lien upon it, and it could not be shipped without their consent. At that time the iron was worth enough to pay the liens, leaving a margin to the owners. The sales actually made, in November and December, 1874, were for $28 to $38 per ton (see account of sales, record p. 85).

Rhodes & Co. were engaged in selling iron upon commission, and were desirous of obtaining this iron for sale, and for that purpose it was necessary to negotiate with the holders of the liens.

Mr. White and the plaintiffs were not seeking to *borrow* money on the iron. They had *loaned* money to the Iron Company, taking the iron as their security, and were willing to allow it to be sent forward for sale for the Iron Company, if they had other satisfactory security in its place, or if their liens were paid. They did consent to let the iron go, upon Rhodes & Co. agreeing to pay them their advances to the amount specified in the memorandum, which was an *absolute agreement* to advance a certain sum.

The testimony of Mr. White (record p. 17), which is not disputed by the defendants, shows that such a thing as a loan to White or the plaintiffs was not thought of. Rhodes & Co. agreed to discount the paper of the Michigan Iron Company without any endorsement or guarantee (record p. 58), holding the iron as collateral, and to advance to Mr. White (who represented the plaintiffs), $25.25 per ton.

The advance to be made was a loan to the

Michigan Iron Company, applied to the payment of the liens of the plaintiff on the iron.

The nature of the transaction is well stated by the district judge, in his opinion filed in denying the motion for new trial (record p 13).

Each advance made by Rhodes & Co, was made on a specific lot of iron. When, on Sept. 3d, 1874, Mr. White drew for $13,566, (Exhibit G. record p. 93) to be forwarded for discount, the Michigan Iron Company's paper was forwarded. Rhodes & Co. discounted the paper, and paid Mr. White's draft, making advance on *that particular iron.*

On Sept 16th, 1874, he drew again for $12,358.02, forwarding for discount the Michigan Iron Company's paper, and the advance was made on the specific lots of iron mentioned in the letter of advice. (Exhibit L. record p. 94). This was the only *advance* made on the iron the plaintiffs and the bank held as security.

The other advances for which Mr. White drew were made in the same way.

Rhodes & Co. were notified from time to time, what iron was for account of Mr. White alone, and what for other parties. Still Rhodes & Co. made advances, as agreed, on all the iron held by Mr. White as security, but made advances on only a part of that held by plaintiffs. The result was, that iron declined in price. Rhodes & Co. had advanced on the White iron, and the "Schoch" iron (with which neither White nor plaintiffs had anything to do,) more than the market

would warrant, and so claimed to hold 884 tons of iron on which plaintiffs had a lien, *on which they had made no advances*, as security to cover the over-advances made on the other iron.

II.

But if the court erred in placing this construction on the contract it will not entitle the plaintiffs in error to a reversal, if, *upon their own showing*, the plaintiffs below were entitled to a verdict as great as was given by the jury.

Rhodes & Co. made no distinction between the different lots of "Michigan" iron that was consigned to them, but piled all together, and sold from all indiscriminately.

The bills of lading showed what iron was shipped for account of Shoch, and what for account of White.

On Sept. 10th Mr. White sent a list of shipments made to that date (exhibit X, record pp. 93 and 94), specifying particularly what lots were for his own account, and what other parties were interested in, with the request to keep them separate. These lots had already been mixed, but on Sept. 18th Mr. White drew for the advance *on these lots*, and the draft was paid (exhibit L, record pp. 94).

After this, in every case, Rhodes & Co. was notified, at each shipment, of what iron was for White's account exclusively, and what for others. The mingling therefore, *if it was to be sold for account of the lien holders and accounted for as sold*, was inexcusable. It was just what they naturally would do, however, if the transaction was an agreement to loan the money to the Michigan Iron Company and pay off the liens.

Under the circumstances, if it were conceded, or held that Rhodes & Co. were only liable for the *proceeds* of the iron, they cannot complain, if sales actually made are considered as made for White, Shoch and the plaintiffs, *pro rata*.

Rhodes & Co. make statements of actual sales made by them, out of the iron sent for account of White, Shoch and the plaintiffs, indiscrimately (record pp. 84 to 93 and 96). A computation was made, *from the statements furnished by Rhodes & Co.*, by Richard Blake, who was sworn as a witness to the computation (record pp. 32 and 33), on this basis (Exhibit X, record p. 97, and Exhibit Y, pp. 98 and 99).

Exhibit X, is a footing of all the iron shipped for account of several parties, as shown by Hanna's statements (record pp. 83 and 86), dividing the "White" iron between White and plaintiffs, in accordance with White's letters to Rhodes & Co. above quoted, and also a footing of all, to show the total amount of "Michigan" iron shipped. It contains also a footing of all the net receipts of sales, as shown by Rhodes & Co's account.

Each sale should be deemed to contain

that proportion of plaintiffs iron, that the whole of plaintiffs' iron bore to all the "Michigan" iron, and the plaintiffs should be entitled to the same proportion of the net proceeds.

Exhibit Y. is the computation of plaintiffs proportion of the net proceeds of each sale, and interest from the time the money was received, and shows the balance due plaintiffs, over and above payments made, on that basis.

This estimate shows that *on the testimony and statements of the defendants below*, plaintiffs were entitled to a verdict, computing interest to July 17th, 1873 (the day before the verdict was rendered), of $9,396.83, if actual receipts from sales were to govern, instead of the agreement to advance. The verdict given by the jury was $9,120.52.

If, then, the arrangement was as Rhodes & Co. claim it, and the construction put upon the contract was erroneous, they are not injured by the error, as the verdict is less than it should have been, on that theory.

DAN. H. BALL,
Attorney for Defendants in Error.

122-24

In the Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 271.

MARCUS A. HANNA et al.

Plaintiffs in Error,

v.

JOHN B. MAAS et al.

In Error to the Circuit Court of the United States for the Western District of Michigan.

BRIEF FOR DEFENDANTS IN ERROR.

D. H. BALL,
A. T. BRITTON,
A. B. BROWNE,
W. H. SMITH,
Att'ys for Defts.

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1887.

In the Supreme Court of the United States.

OCTOBER TERM, 1886.

MARCUS A. HANNA ET AL.,
PLAINTIFFS IN ERROR,
v.
JOHN B. MAAS ET AL.

No. 271.

In Error to the Circuit Court of the United States for the Western District of Michigan.

BRIEF FOR DEFENDANTS IN ERROR.

This action was brought in the State court, and transferred to the United States court.

It was founded upon a contract, of which the following is a copy:

"MARQUETTE, MICH., *Aug.* 22, 1874.

"PETER WHITE, Esq.

"DEAR SIR: We will advance $25.25 per ton on 500 to
"1,000 tons Michigan charcoal pig iron when delivered at
"Cleveland.

"Truly yours,

"RHODES & CO.

"We will pay lake fr't and dockage, not to exceed 2.00
"per ton on the above, and increase the amount of iron to
"2,000 tons.

"RHODES & CO."

Peter White was acting for himself, the First National Bank of Negaunee, Michigan, and the plaintiffs.

Before suit was brought the plaintiffs acquired all the interest of the other parties.

The defendants were commission merchants at Cleveland, Ohio.

All the ore stipulated for was delivered to them. They advanced considerable sums on the same, and this suit was brought for the balance claimed to be due from them.

After the execution of the contract the price of iron declined, and the defendants were anxious to get rid of their liability to advance $25.25 per ton and pay the freight and dockage.

They claimed that the iron was sold by sample, and that the iron delivered did not correspond with the sample, and that the iron did not come up to the standard, in quality, of Michigan charcoal pig iron, and was unmerchantable and unmarketable, and that the same was not shipped to them within a reasonable time after the making of the contract.

There was a trial by jury and verdict for plaintiffs for $9,120.52; a motion for a new trial, and motion overruled, and judgment on the verdict.

On the trial sundry exceptions were taken to the charge of the court, and these exceptions are the only exceptions that appear in the record, and the only matters that it is necessary for this court to consider; and they are of such a character that the court will not have the least trouble in understanding them, or the least hesitancy in overruling them. They are all found on pages 66, 67, and 68 of the record.

The first exception is thus stated in the record:

"Mr. MAYNARD: We asked the court to charge the jury

" that under the contract in this case, and the evidence " as it has been produced here, the plaintiff cannot recover " at all upon the first count in their declaration.

" COURT: I beg pardon. I had a memoranda of that, " but it escaped my attention. I refuse that request. I " think the first count is sufficient to entitle the plaintiff " to recover if the facts are such as are claimed by the " plaintiffs in this case and come within the rules we have " laid down to the jury.

" Mr. MAYNARD: It is not to the sufficiency of the count; " it is to the sufficiency of the proof.

" COURT: Well, that is a question, we think, for the " jury, and we decline to weigh its sufficiency. We leave " all the facts to the jury. I thought you referred to the " count as not being sufficient."

It is, perhaps, a little difficult to understand just what the counsel for defendants wished the court to charge; but, taken in the most favorable light for the defendants, it was a request that the court should direct the jury that the evidence was not sufficient to justify a verdict for the plaintiffs upon the first count in their declaration.

This the court refused to do, but did charge, in substance, that there was evidence before the jury in support of that count, and whether it was sufficient for them to find a verdict for the plaintiffs was left to them to decide.

The court was clearly right, provided there was any evidence before the jury in support of that count. It is the province of the jury to weigh the evidence, and not the court.

Hickman v. *Jones*, 9 Wall., 197.
Manchester v. *Ericson*, 105 U. S., 347.

Now let us see what the first count was, and whether there was any evidence to support it.

The first count alleged that the defendants were engaged in the business of selling pig iron at Cleveland, and mak-

ing advances thereon; that on the 22d of August, 1874, they agreed with the plaintiffs, through their agent, Peter White, that, in consideration of their delivering to them for sale on commission "Michigan charcoal pig iron," which they then had and were receiving in pledge for themselves and the First National Bank of Negaunee, for advances made thereon, the defendants agreed to receive said pig iron to the amount of two thousand tons, and to advance and pay to plaintiffs thereon the sum of $25.25 per ton upon the receipt of the iron, and to pay the lake freight and dockage thereon to the amount of two dollars per ton.

It alleged that the plaintiffs did, by their said agent, Peter White, deliver to the said defendants, during the following months of August, September, October, and November, two thousand tons of said iron of the value of sixty thousand dollars, and that by reason thereof there was a large sum still due to them, to wit, thirty thousand dollars.

We shall find, by an examination of the record, that, instead of there being *some* evidence to substantiate each of the allegations of this count, there was *full* proof upon each point.

Marcus A. Hanna, one of the defendants in this case, testified: "I was a member of the firm in the year 1874 "and we were engaged in the coal, *pig iron*, and iron ore, "business" (Record, 70).

The written agreement showing the terms of the contract (a copy of which we have already given) was read in evidence (Record, 17, 68).

It was admitted by defendants' counsel that all the iron shipped by White was subject to a lien in favor of plaintiffs and the First National Bank of Negaunee.

Mr. Maynard, counsel for defendants, said, "We will

" admit that all the iron shipped by White was subject " to a lien in favor of Maas, Loustorf & Mitchell and the " bank—I don't know which was which—at twenty dollars " a ton, with interest at ten per cent. That it was, as a " matter of fact, subject to that lien, and it was known to " Mr. White when he shipped it " (Record, 16).

It was admitted that all the interest of the bank had been assigned to the plaintiffs (Record, 16).

It was proved that Peter White had assigned all his interest to plaintiffs (Record, 97.)

It was proved by the testimony of the defendant Hanna (whose deposition was given in evidence by plaintiffs) that the Michigan Iron Company had shipped to them on account of Peter White, in the summer and autumn of 1874, 1,976 tons and 1,900 pounds (Record, 71).

Thus it is seen that every allegation of the first count was *clearly* made out, and therefore the court did not err in declining to instruct the jury that the evidence was not sufficient to justify a verdict on the first count of the declaration.

The second exception to the charge was as follows:

" Mr. MAYNARD. We except to that portion of the charge " that there is evidence in this case tending to show that " Hanna knew that the Michigan Iron Co. had any inter- " est, or that the plaintiffs were especial lienholders, of this " iron " (Record, 66).

The COURT said: " The reporter will note that exception. " We think there is evidence tending to show that, and we " leave it for the jury to say whether it is sufficient or not. " We say there is evidence tending to show that fact." (Record, 66).

The court was right. There is abundant evidence on that point.

Peter White was examined as a witness for plaintiffs. He testified that the written contract was executed by Mr. Hanna, one of the defendants; that the first portion of the contract for 1,000 tons was first executed, and that afterwards, on the same day, the second portion for the other 1,000 tons was executed under the following circumstances: He was sent for and requested to come to the office of the Michigan Iron Co.; that he went to that office and found there Mr. Hanna, one of the defendants; Mr. Ripka, who was treasurer of the company; Mr. Blake, the secretary of the company; Mr. Breitung and Mr. Wetrune, directors of the company, and Mr. Maas; that it was stated there that other parties wished to ship iron in his name under the same arranagement that he had made; that this was the iron of the Michigan Iron Co., upon which Maas, Loustorf & Mitchell, and the First National Bank of Negaunee, had a lien, and that the contract for the second 1,000 tons was thereupon made; that it was arranged between him and Mr. Hanna that the paper of the Michigan Iron Co., at the rate of $25.25 per ton, at four months, with interest at 10 per cent., should be sent with the bill of lading of each shipment, together with his sight draft at the rate of $25 per ton, and that the defendants should discount the note of the Michigan Iron Co,, and with the proceeds pay this sight draft (Record, 17, 18).

This was done. Mr. Hanna testifies, substantially, to the same thing, and says that the account was kept in the name of the Michigan Iron Company (Record, 71, 72).

On the cross-examination of Mr. White, Mr. Maynard put to him the following question: "In the shipment of "this iron you were acting, by the consent and agreement "of the parties, in behalf of yourself, or the right which "you represented, and also the right or interest which the "First National Bank of Negaunee and the plaintiffs in

" this action had or claimed upon the property, *as well as* " *the Michigan Iron Co.*, I take it? A. Yes, sir."

The letter written by the defendants to Peter White, of September 24, 1874, shows unmistakably that they knew that the Michigan Iron Co. had some interest in the shipments.

It closes as follows: "Then, you know the *Michigan Co. are not in a shape to put up much margin to cover* " *shrinkage;* therefore it behooves us to be on the safe side, " which we propose to do, so don't get cross about it, for " we are doing nothing unreasonable" (Record 82).

See letters of White (Record, 75, 76); letters of Rhodes & Co. (Record, 78, 79, 80).

As to that portion of this second exception which relates to Hanna's knowledge that plaintiffs were lienholders, there is the express admission before given (Record, 16) that they were lienholders, and the express testimony of White that Hanna was present and knew of the arrangement by which the 1,000 tons was added to the original agreement, and knew that plaintiffs had an interest in the same, or some portion thereof (Record, 16, 17, 18).

Third exception. Mr. Maynard: " We asked the court " to charge the jury that up to the time that we had actual " notice of Maas' and Loustorf's, or these plaintiffs', in- " terest in this consignment, that they were entitled to " deal with White as the absolute owner upon the bills of " lading, and to charge against the whole consignment any " advances and expenses which were proper to be charged " at all."

The court said: " We decline to give that instruction, " because we think that there is some evidence which tends " to show knowledge on the part of the defendants that " others than Mr. White had an interest in this property, " and that they were dealing with Mr. White in the in-

" terest of others. It is for the jury to say whether this
" is the fact or not. We say this, however, that if the
" jury should find that there was no ground for these de-
" fendants, under the evidence, to understand that they
" were dealing with anybody but Mr. White, then your
" proposition would be correct."

That there was ground for the jury to find that the defendants knew that other parties than Mr. White had an interest has already been shown from the record.

The last exception was as follows:

" Mr. MAYNARD: We desire to present an exception to
" the general refusal of the court to charge that, if they
" find the relation of consignor or consignee, or consignees
" and factors, between these defendants and White, as the
" agent of the plaintiffs, then, in such event, there can be
" no recovery in this case upon the first count in this
" declaration.

" The COURT: I did not deem it necessary to say any-
" thing to the jury on that topic. You may have an ex-
" ception.

" Mr. MAYNARD: We desire to note an exception to each
" refusal of the court to charge as requested.

" The COURT: I think it was understood what I said
" about the first exception you just mentioned. Such would
" be the rule, as you claim it, if these defendants were
" dealing with this property simply as commission mer-
" chants, selling it for account of the owners, special or
" general owners, in the absence of a contract to make ad-
" vances, if they made advances beyond the value of the
" iron, beyond the amount they could sell it for, or did
" sell it, using good faith in the disposition of it, they
" would be entitled to recover back of the owners, general
" or special, or for whose account they sold it, the excess
" over which they sold it for. But, in this instance, we say
" that there was a contract obligating these defendants to
" pay an advance—to make an advance—and these parties
" who had a special lien or claim upon property, or special
" interest in it, parted with the property on the strength

" of this contract, and, therefore, the rule would not be " that the defendants could recover back anything from " them."

The answer of the court to the point made in this exception is so clear and satisfactory that we deem it unnecessary to discuss the question, and are willing to submit it without comment.

We have considered all the exceptions presented by the record, and, in our opinion, they are not well taken, and the judgment below should be affirmed.

D. H. BALL,
A. T. BRITTON,
A. B. BROWNE,
W. H. SMITH,
Att'ys for Defts.

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122-27

IN THE

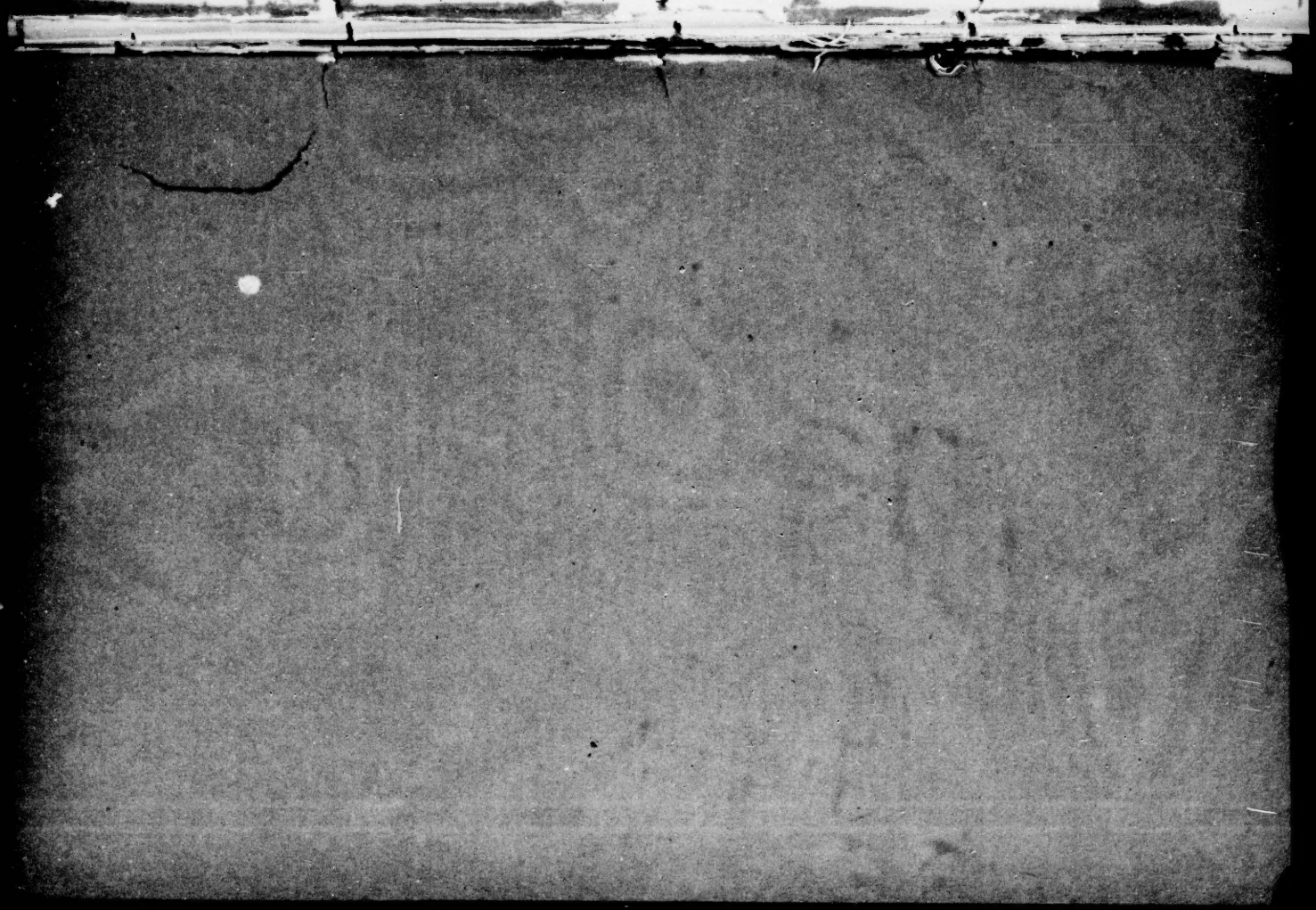
Supreme Court of the United States.

GEORGE GIBSON

vs.

H. H. SHUFELDT & CO. ET ALS.

Motion to Dismiss Appeal under Rule 6 of Supreme Court.



IN THE

Supreme Court of the United States.

GEORGE GIBSON
vs.
H. H. SHUFELDT & CO. ET ALS.

Motion to Dismiss Appeal under Rule 6 of Supreme Court.

STATEMENT OF CASE.

The appellees, who composed the firm of H. H. Shufeldt & Co., who were citizens of Illinois, and creditors of E. Courtney Jenkins, filed their bill in equity on January 10th, 1883, in the Circuit Court of the United States for the Eastern District of Virginia, against E. Courtney Jenkins, doing business under the style of E. Courtney Jenkins & Co., Irvin Watkins, trustee, and George Gibson, citizens of Virginia, to annul and set aside, as fraudulent and void, a deed of trust from said E. Courtney Jenkins, dated 5th day of January, 1883, to Irvin Watkins, trustee, securing his creditors in certain orders of preference. The appellant, George Gibson, was first preferred; and the merchandise creditors, not described by name, were postponed to all others, and were required to execute a release of the grantor from all liability within sixty days from the date of the deed, as a condition of their participating in the benefits of the trusts. The appellees, H. H. Shufeldt & Co., and other creditors uniting in this motion, were embraced in this latter class. In this suit, the other merchandise creditors of E. C. Jenkins filed petitions praying to be made parties plaintiff,

and seeking the benefits of the proceedings and decrees therein.

On the same day, another suit in equity was instituted in the same court, and against the same defendants, for the same objects and purposes, by the Mill Creek Distilling Company, a corporation created by the laws of Ohio, also a creditor of E. Courtney Jenkins & Co.

Amended bills in each case were filed, making additional parties defendant. The two causes were heard together on full proofs, and, after a full argument, a decree was rendered by the court (Judges Bond and Hughes concurring) on the 8th day of October, 1884, declaring said deed of trust fraudulent and void, and setting it aside; and a reference to a master was directed to ascertain the priorities of the complainants and petitioning creditors, in the distribution of the fund realized from the trust estate, under the statutes and decisions in Virginia. After the filing of the master's report, the same was confirmed by the court, and a distribution made by the final decree of the 13th day of June, 1885, from which decree this appeal has been taken.

Record of Case.

The following are the pleadings and master's report, and decrees determining the questions in controversy:

To the Honorable Judge of the Circuit Court of the United States for the Eastern District of Virginia:

Humbly complaining, sheweth unto your Honor your Orators, Henry H. Shufeldt and W. C. Eagan, merchants and partners, under the firm and style of Henry H. Shufeldt & Co., each member of which said firm is a citizen of the State of Illinois, that E. Courtney Jenkins, doing business under the name and style of E. Courtney Jenkins & Co., citizens of the State of Virginia, and residing and doing business in the city of Richmond, in the Eastern District of Virginia, is justly indebted to your Orators in the sum of

$3,465.28, evidenced by five several notes, the first of which is dated September 20th, 1882, at one hundred days, for $863.20, and which matured 1st of January, 1883; another dated October 10th, 1882, at ninety days, for $846.30, and which will mature on the 11th day of January, 1883; another dated October 28th, 1882, at ninety days, for $479.00; and which will mature on 29th January, 1883; another dated November 16th, 1882, at ninety days, for $735.76, and which will mature on 17th February, 1883; and another dated November 11th, 1882, at ninety days, for $541.02, and which will mature on 12th of February, 1883, a memorandum of which notes are herewith filed as exhibits "A," and prayed to be taken as a part of this bill, and the notes themselves will be filed whenever required by the court, or shall be necessary by the requirements of the case.

Your Orators further state, that on 29th of December, 1882, they received a letter from said E. Courtney Jenkins & Co. requesting your Orators to telegraph to the bank here to hold or return to your Orators, without protest, said note of $863.70, due January 1st, 1883, setting forth, among other things, that a most unexpected demand, occasioned by the misfortune of a relative, compelled them (said E. Courtney Jenkins & Co.) to ask the indulgence of all their creditors, and asserting that they could shew a statement which they hoped would be satisfactory to all concerned, and that your Orators would hear from them, either in person or by letter, at the earliest possible moment; and then follows this important statement, to-wit: "Meantime we only ask your confidence, and assure you that our intentions are honest to all parties, without any preferences." The said letter is herewith filed as exhibit "B," and prayed to be taken as a part of this bill. Upon the receipt of said letter of the 29th of December, 1882, your Orators, relying upon the good faith of the said E. Courtney Jenkins & Co., in employing with all of their representations in said letter,

and especially upon his assurance and promise that no preferences should be given to any creditors, your Orators did, by telegraph, on the 2nd day of January, 1883, recall said note, according to the request of said E. Courtney Jenkins & Co., so that the same was not protested.

And your Orators further say that the said E. Courtney Jenkins & Co. sent to your Orators a letter dated the 3rd of January, 1883, inclosing the copy of a letter from John Dunlop, Esq., dated December 26th, 1882, addressed to E. Courtney Jenkins & Co., which letter of said John Dunlop was a demand on behalf of George Gibson, an alleged accommodation endorser of E. Courtney Jenkins & Co., to execute a deed of trust to secure him as such endorser. In said letter of E. C. Jenkins & Co., of 3rd of January, 1883, to your Orators, after a long preliminary statement, they say they have felt compelled to submit to his request to execute a deed of trust to secure him in preference to other creditors, and they wish to request, on behalf of the trustee, Mr. Irvin Watkins, that your Orators would attend a general meeting of the creditors of said E. Courtney Jenkins & Co. A copy of said letter of John Dunlop, and the original letter of E. Courtney Jenkins & Co., of 3rd January, 1883, marked respectively exhibits "C" and "D" are herewith filed and prayed to be taken as parts of this bill. Your Orators were surprised and astonished to learn from the said letter of the 3rd of January, 1883, that said E. Courtney Jenkins & Co. had made a deed of trust to said Irvin Watkins, as trustee, securing to George Gibson a large sum of money. From one source the amount secured to George Gibson is stated to be about $10,000, and from another source your Orators have learned that it is about $23,000; and that by said deed of trust, said E. Courtney Jenkins & Co. have given preference to George Gibson over all of his other creditors. Your Orators can only speak as to these matters from information gathered by them from exhibit "D" and from outside sources, because said deed of trust has not been ad-

mitted to record, and because they have had no positive information as to its contents.

And your Orators charge that the said E. Courtney Jenkins & Co., well knowing of George Gibson's demand to be secured when first they wrote to your Orators, because John Dunlop's letter, according to their own admissions, was before them, withheld that information from your Orators and lulled them into security by declaring that no preferences should be given, and this induced your Orators to withdraw said note, and not allow its protest. And your Orators charge that the execution of this deed of trust, under such circumstances, in the face of the solemn declarations and promise of said E. Courtney Jenkins & Co., to give no preferences to any of his creditors, is a fraud upon your Orators.

Apparently, in the same spirit of concealment, the said E. C. Jenkins & Co., while professing to write to your Orators on behalf of the trustee, Mr. Irvin Watkins, requesting them to attend a general meeting of creditors, still withholds said deed of trust from record, and does not permit his creditors to know the contents thereof, or the terms of said deed of trust; that, so far as your Orators know and believe, the business of the concern is carried on in the same manner as before the execution of the deed of trust, the sign being over the door, and the place of business open as usual. Your Orators charge that the said deed of trust, made under the circumstances above mentioned, while it may be, as they are advised, good between the parties thereto, is void as to your Orators, as one of the creditors of said E. C. Jenkins & Co. And your Orators charge that said deed of trust was made to delay, hinder and defraud your Orators and the other creditors of said E. Courtney Jenkins & Co. And your Orators are informed, believe and charge that there is embraced in said deed of trust all the goods, chattels, effects and property of said E. Courtney Jenkins & Co., in their store, on Fourteenth street, in the city of

Richmond, and other property in other places unknown to your Orators. And if, as appears to be the case, that the business is carried on as usual, and your Orators are informed, believe and charge that it is so carried on, then the said E. C. Jenkins & Co. are exercising a power incompatible with the purpose of a deed designed to furnish an indemnity to the said George Gibson; for he is exercising a power adequate to defeat the purposes of such a deed; and the said deed of trust, being unrecorded, is, under the statute of Virginia, in such cases made and provided, null and void as to creditors. That your Orators are apprehensive that under the pretext of said void deed of trust, and by virtue of authority which said E. C. Jenkins & Co., and said trustee, Irvin Watkins, may suppose they have the right to exercise thereunder, that the assets of the concern may be wasted and disposed of by them, and the proceeds unlawfully appropriated to the payment of the liabilities for which the said George Gibson may be bound or otherwise disposed of, in derogation of the rights of your Orator as one of the creditors of said E. C. Jenkins & Co. In tender consideration whereof, and inasmuch as your Orators are remedyless in the premises save, in a court of equity, where such matters are properly cognizable and relievable, your Orators pray that the said E. Courtney Jenkins, under the firm and style of E. C. Jenkins & Co., Irvin Watkins and Geo. Gibson, which said Watkins and Gibson are each citizens of the State of Virginia and residents of the city of Richmond, may be made parties defendants to this bill of complaint, with apt and fit words to charge them as such, and that they are each of them to be required to answer the allegations of this bill; but oath or affirmation to their answers is waived. That said defendant, E. C. Jenkins & Co., be decreed to pay and satisfy your Orators' said demand, and that the assets and effects of said firm be made liable therefor. And to this end that the said E. C. Jenkins & Co., Irvin Watkins, trustee, and all others, their agents and attorneys, be enjoined and

restrained from selling, disposing of, or otherwise interfering with the goods, chattels, effects and property of said E. C. Jenkins & Co., until the further order of this Court; and that a receiver be appointed to take charge of said goods, chattels, effects and property, and hold and keep the same subject to the order of this Honorable Court. Your Orators pray that process may issue, according to law, directed to said defendants, commanding them to appear, &c. That all proper orders and decrees may be made, and accounts taken, that may be necessary, and that all such further and general relief may be granted to your Orators as the nature of the case may demand and to equity may seem meet and proper.

And your Orators will ever pray, &c.

H. H. SHUFELDT & CO.,
By CHAS. H. HARVEY, *Agt. and Att'y.*

JOHN A. COKE,
CARRINGTON & FITZHUGH,
Attorneys for Complainants.

STATE OF VIRGINIA, CITY OF RICHMOND, TO-WIT:

This day personally appeared before the undersigned, a notary public for the city of Richmond, Va., Charles H. Harvey, who made oath that the allegations in the foregoing bill of complaint, signed by him as agent and attorney for H. H. Shufeldt & Co., so far as made on his own knowledge are true, and so far as made on knowledge or information derived from others, he believes them to be true. Given under my hand this 9th day of January, 1883.

JNO. A. COKE,
Notary Public for the City of Richmond, Va.

Exhibit B.

OFFICE OF E. COURTNEY JENKINS & CO.,
113 SOUTH FOURTEENTH STREET,
RICHMOND, VA., *Dec.* 29, 1882.

MESSRS. H. H. SHUFELDT & CO., *Chicago, Ill.:*

DEAR SIRS: Will you be kind enough to telegraph bank here to hold or return to you without protest our note falling due on January 1st (payable according to state law here on 2d) for $863.70. A *most unexpected demand*, occasioned by the misfortune of a relative, compels us temporarily to ask the indulgence of *all* our creditors; but we can show a statement which we hope will be satisfactory to all concerned, and you will hear from us, either in person or by letter, *at earliest possible moment*. Meantime we only ask your confidence, and assure you that our intentions are honest to *all* parties, without any preferences; and we believe we can establish this fact to your entire satisfaction. Regretting the necessity that occasions this request, and trusting that you will give us kindest consideration, we are,

Very respectfully yours,

E. COURTNEY JENKINS & CO.

Exhibit C.

1003 BANK ST., RICHMOND, VA., *Dec.* 26, 1882.

MY DEAR SIR: You will have heard of the recent death of Mr. Bennett Dashiell, who was for so many years the confidential friend and clerk of Mr. George Gibson. Owing to Mr. Dashiell's death, I am obliged to ask you to execute a trust deed to secure Mr. Gibson as your accommodation endorser on notes endorsed now by him for you. It is with great regret that Mr. Gibson now makes through me, his counsel, this request of you, especially as your business promises so well at present, and Mr. Gibson would be the

last person to effect in any way injuriously your credit. But Mr. Gibson's own health has not been very good of late, and the death of Mr. Dashiell makes him feel the necessity of closing up all matters outside of the firm of Spotts & Gibson. I unite with him in his great regrets, and remain,

Very sincerely yours,

(Signed) JOHN DUNLOP.

E. COURTNEY JENKINS & Co., *Richmond, Va.*

[Recalled by telegram Jan. 2.]

Exhibit D.

OFFICE OF E. COURTNEY JENKINS & Co.,
113 SOUTH FOURTEENTH STREET,
RICHMOND, VA., *Jan.* 3, 1883.

MESSRS. H. H. SHUFELDT & Co., *Chicago, Ill.:*

DEAR SIRS: On 26th December, we received communication, of which we enclose copy, from Mr. John Dunlop, of this city.

On receipt thereof we urged upon Mr. Dunlop (who is our personal friend, and at times business counsel), that the execution of such a deed, without previous consultation with our general creditors, would be very damaging to our future credit, and that we had rather make a deed, not preferring Mr. Gibson, but allowing equal distribution *pro rata* for all concerned. We endeavored by delay and by personal appeal to effect this, and we meantime addressed letters to our several creditors interested, asking them to protect or to recall notes falling due in the interval between December 26th and January 10th, hoping that by the latter date we might be able to make some arrangement which would permit our active continuation of business and redemption of paper on which we had asked extension. At this date, however, Mr. Gibson demands and insists upon the execution of the deed

aforesaid; and as he has never realized a cent from the continued endorsement given us, but has been actuated only by the kindest motives, we have felt *compelled* to submit to his request. We shall, by early mail, send you sworn statements of our assets and liabilities, and now write to request, on behalf of the trustee, Mr. Irvin Watkins, our book-keeper for years past, that you will attend in person, if possible, or otherwise by proxy, a *general meeting* of our creditors, to be held here in our office on 11th inst., (Thursday of next week). We believe we can then satisfy you that this unexpected condition of affairs is the result of sheer misfortune, which will leave us penniless, unless, should consideration be shown, we may yet hold and control our established trade, which has amounted to from $100,000 to $125,000 per annum. Under present exhibit of our condition, however, we honestly assert that we would not presume to ask any credit whatever until *all* our creditors are convinced that our failure has been as great a loss to us as to them. Unfortunately as it has so transpired, we assumed a debt in July, 1877, when under the firm name of Jenkins & Stegal, we bought out Jenkins, Capers & Co., for $23,000, and in next twelve months passed over to profit and loss account the sum of $6,000, for which we had paid 100 cents on the dollar. In March, 1879, Mr. Stegal was personally afflicted, and went to insane asylum for some months, and that mishap cost us over $5,000. In January, 1881, Mr. J. C. Hicks, our salesman, was advertised as our partner, on the promise that he would contribute at least $5,000 capital—a promise never fulfilled. In January, 1882, owing to his heavy losses by speculation, Mr. W. J. Jenkins, who had been our endorser to the extent of $10,000, failed, and we were called upon to pay his paper at maturity. But for the kindness of our two largest creditors, Maddux, Hobart & Co., and the Mill Creek Distilling Co., in silently extending our obligations, we would then have been seriously crippled; but their considerate treatment saved us from immediate disaster. And thus, after

combatting blow after blow, and paying heavy interest beyond our ability, and hoping against hope all the while, we have had finally to succumb and throw ourselves upon your indulgence. We thank you kindly for withdrawing our notes as requested last week, and we beg that you will be here in person on 11th inst. Meantime we remain,

Very truly yours,

E. COURTNEY JENKINS & Co.

FIRST AMENDED BILL.

IN THE UNITED STATES CIRCUIT COURT FOR THE EASTERN DISTRICT OF VIRGINIA.

TO THE HONORABLE JUDGES OF SAID COURT:

Humbly complaining, sheweth unto your Honor your Orators, Henry H. Shufeldt & Co., that heretofore, to-wit, on the 10th day of January, 1883, your Orators filed their bill against E. Courtney Jenkins, Irvin Watkins, trustee, and George Gibson, citizens of the State of Virginia, setting forth in brief that the said E. Courtney Jenkins, doing business under the name and style of E. Courtney Jenkins & Co., was indebted to your Orators in a large sum of money, to-wit, the sum of $3,465.78, as set forth in detail in said bill.

Your Orators then referred in said bill, as part thereof, to a letter from said E. Courtney Jenkins, of the 29th of December, 1882, and to another letter of said Jenkins to your Orator, of the 3rd day of January, 1883, and also to a copy of a letter from John Dunlop, Esq., to said Jenkins, of the 26th day of December, 1882, which was enclosed in one of said letters from said Jenkins to your Orators.

Your Orators further state, that in said bill they averred that, in compliance with the request of said Jenkins, and confiding in the promise of said Jenkins contained in said letter of December 29, 1882, they had withdrawn from bank the note of said Jenkins to your Orators maturing January 2, 1883; that, to their surprise and astonishment, they were informed by said letter of January 3, 1883, of said Jenkins to your Orators, that said Jenkins had made a deed of trust at the solicitation of George Gibson, the alleged accommodation endorser of said Jenkins, giving a preference to him, and inviting your Orators and other creditors to meet said Jenkins in Richmond about his affairs.

Your Orators further charged in said bill, that said deed of trust was unrecorded, and while unrecorded was null and void as to your Orators and other creditors; that your Orators had not seen said deed, and were not informed of the contents thereof, except from outside sources, as set forth in said bill; that the said Irvin Watkins, the trustee, although the said deed was unrecorded, and while so void as to your Orators, was proceeding to execute the trusts of said deed, and to wind up the business of said E. Courtney Jenkins, doing business as aforesaid; and that such proceedings, under the circumstances detailed in said bill, were in derogation of the rights of your Orators, and fraudulent and void as to them; and that, unless restrained by the injunction of this Honorable Court, that such proceedings would result in irreparable loss and injury to your Orators, inasmuch as said Jenkins was insolvent—all of which will more fully and at large appear upon reference being had to the said bill of your Orators.

Your Orators now charge, by way of amendment to their said original bill, that since the filing of that bill the deed of trust therein referred has been placed upon record; that it was admitted to record on the 11th day of January, 1883; that when your Orators' original bill was filed, they had

had no access to said deed of trust, and could not procure a copy thereof.

Since the said deed of trust was recorded, they have procured a copy thereof, and now file the same herewith as Exhibit AA, and pray that the same may be taken as a part of this bill.

Your Orators further show by way of amendment, as aforesaid, that, at the time of filing their said original bill, they inferred and believed from said letter of said Jenkins to your Orators, of the 3rd day of January, 1883, and from other sources, that said George Gibson was the only preferred creditor named in the said deed of trust. From an inspection of said deed of trust they now find that William F. Jenkins, Joseph W. Jenkins, Michael Jenkins, George C. Jenkins, and Joseph W. Jenkins, doing business under the firm name and style of Jenkins Brothers, and perhaps other persons and firms, who are unknown to your Orators, are also interested as preferred creditors of E. Courtney Jenkins, doing business under the name aforesaid. And your Orators now pray that the said last-named parties, viz.: William F. Jenkins, Joseph W. Jenkins, the said firm of Jenkins Brothers, and said unknown preferred creditors, when known, may all be made parties defendants to this bill, and that they and each of them answer this and said original bill (but oath or affirmation to such answer is hereby waived).

Your Orators renew the charge in said original bill, that said trustee Watkins, while said deed of trust was unrecorded, did proceed to execute the trusts of said deed, and in part to dispose of some of the property conveyed by the said deed. And they renew all other charges and allegations in said original bill contained.

And in addition thereto your Orators now charge that the said deed of trust is fraudulent and void as to them, because it requires a release from unpreferred creditors, as is set forth in the said deed of trust. And your Orators are

advised and charge, that in order to make a deed requiring such a release as is therein set forth a valid deed, the grantor is required to convey the whole of his property for the benefit of his creditors. And your Orators are informed, believe and charge, that said E. Courtney Jenkins, the grantor in said deed, has not embraced all of his property in said deed, but has omitted to convey a large amount of very valuable furniture, the amount and value of which is unknown to your Orators.

Your Orators therefore pray, that for the causes set forth in the original bill and in the amended bill, the said deed of trust be decreed by this court to be null and void as to your Orators, and as to all creditors situated as your Orators are. They hereby renew all the prayers for process, for all proper orders and decrees, and for an injunction and a receiver, and for general relief made in the original bill as fully as if the same were here repeated.

And your Orators will ever pray, etc.

H. H. Shufeldt & Co.,
by Chas. H. Harvey, Agent.

John A. Coke,
Carrington & Fitzhugh,
Attorneys for Complainants.

State of Virginia, City of Richmond, to-wit.:

This day C. H. Harvey personally appeared before the undersigned, and made oath that he believed the allegations in the foregoing bill to be true.

Given under my hand this 17th day of January, 1883.

John. A. Coke, N. P.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.—FOURTH JUDICIAL DISTRICT.

HENRY H. SHUFELDT & Co.,
AGAINST
E. COURTNEY JENKINS & Co., &c. } *In Equity.*

TO THE HONORABLE JUDGES OF THE SAID COURT.

The Answer of E. Courtney Jenkins to the Bills, Original and Amended, Exhibited against him in this Court in the above-entitled cause.

This respondent, without waiving his demurrer to said bill, and saving to himself the usual exceptions, for further answer to said bill saith:

1. That he has carried on business in the city of Richmond, up to a recent date, under the style of E. Courtney Jenkins & Co.

2. He admits that he gave his five notes, signed under said style, to the plaintiffs, aggregating $3,465.78, one of which only had become due prior to the filing the plaintiff's bill, to-wit: one for $863.70; the other four are for the amounts, and payable at the times, as set forth in the bill.

3. Respondent further states that he has been engaged in business in the city of Richmond for nearly eleven years, during the greater part of which time he has been associated with other parties, who were his partners but for the last few years he has carried on business on his own account exclusively; that this business has been quite large, and he has had transactions with most of the persons who are now his creditors during said period of about eleven years, involving hundreds of thousands of dollars; and up to, or down to, the first of January, 1883, he has always met his engagements promptly, except that, in February, 1882, Maddux Hobart & Co. and the Mill Creek Distilling Co. gave him a silent extension on paper they then held, and several other

creditors, each on one occasion, extended to him the customary accommodation granted by merchants.

4. His capital was small when he commenced business, and has all the time been so; and he was enabled to carry it on by the kind and generous aid which he had from his friend, George Gibson, and certain of his relatives, all of whom, with the exception of one, reside in the city of Baltimore. The persons mentioned had rendered that assistance by endorsing his notes for his accommodation, without receiving or expecting to receive any remuneration or advantage whatever.

5, The said Gibson, at the time this respondent had to suspend his business, was bound, as his accommodation endorser, for the sum altogether of $21,700, without reckoning interest; W. F. Jenkins was bound, as such endorser, for $3,700; Joseph W. Jenkins, Sr., for $2,050; Michael Jenkins for $2,000; George C. Jenkins for $1,000; and J. W. Jenkins, Jr., for $1,000—the last three described and designated in the deed of trust referred to in said plaintiff's bill of complaint as Jenkins Brothers.

6. Respondent further states that his business was progressing well, and he had a reasonable hope of greatly improving his financial condition (relying, however, upon the continued assistance and accommodation of the friends who had so generously aided him in the past), when he received, on the 26th December last, the letter of John Dunlop, Esq., counsel for said Gibson, a copy of which is filed with the bill; that this was the first intimation he had that such a demand as it contained would be made upon him. He at once became satisfied that if the valuable and material assistance theretofore continually afforded him by said Gibson should be withdrawn, he would be unable to carry on his business or meet his engagements, and that there was nothing left for him to do but to get his creditors together, and make some satisfactory arrangement with them. He was not without the hope that, if this could be done, and he could thus be

enabled to continue business, he might, at no very distant day, be able to meet all his liabilities. He was surprised at Mr. Gibson's demand, although he gave, through Mr. Dunlop, the reasons which induced him to make it. But, while Mr. Gibson asked him, by the letter referred to, to execute a trust deed to secure him as his endorser, he had not intimated specially the precise nature of the deed which he desired him to make; and therefore, respondent, believing at the time that he would be able to induce Mr. Gibson to be content with a deed by which he would convey all his assets and property, of every sort, to secure all of his creditors alike, he wrote the letter of the 29th December to the plaintiffs, and letters of pretty much the same purport to some other of his creditors. Nothing was further from this respondent's thoughts than the idea of deceiving or attempting to deceive his creditors, or to lull them into security. He denies that the plaintiffs were, or could have been, in the slightest degree injured by reason of anything he wrote in the letter referred to, or that their complying with his request to hold up or withdraw the note that matured on the 1st January, 1883, affected their rights in any respect whatever; for respondent was and is as much bound by said note as he would have been if it had been protested; and as there was no endorser thereon, the plaintiffs could have lost nothing, and did lose nothing, by holding it up as requested.

Respondent further states, that after he wrote and sent to the plaintiffs the letter of the 29th December, filed with the bill, he had an interview with the said Gibson and Mr. Dunlop, his counsel. Mr. Gibson earnestly insisted that this respondent should fully secure and protect him from his liability as his endorser, stating that he had been for years endorsing his paper for considerable sums of money, purely for his accommodation, without the hope or expectation of deriving the slightest personal benefit in any way therefrom; that he had done so with the confident belief and expectation that if, in his opinion, it should at any time become neces-

sary for his protection, or if he should, for any reason, desire it, this respondent would not hesitate to secure him from loss whenever he should be requested so to do, and that it was usual and customary that persons in failing circumstances, when they undertook to secure their creditors by deed, should provide first for their sureties. Mr. Gibson also stated that he was growing old, that his health was feeble, and that the death of a valued friend, who was his confidential clerk, all admonished him that he should put his affairs in order, and take care as far as he could to take all steps that were necessary to provide against loss on account of his obligations for other persons, and that he should not incur any more such.

This appeal made to respondent by a valued friend who had so often and so generously sustained him with his credit for years, he was unable to resist, and he felt that it was his duty to comply with Mr. Gibson's request, which, under the circumstances, he could not regard as at all unreasonable; and accordingly he executed the deed on the 5th of January, 1883. When this respondent agreed with Mr. Gibson to secure him by giving him preference over his other creditors, mainly upon the ground that he was his surety, it became, in the opinion of respondent, right and proper that he should at the same time prefer his other sureties; and therefore it was that he did so by including the Jenkinses mentioned in said deed, although it turns out that, through inadvertence on the part of the respondent, an incorrect description of the endorsements by the said Jenkinses was made in said deed, the fact being that the notes described as having been endorsed by Jenkins Brothers were in fact endorsed by the individual members of that firm.

Respondent also states that, having ordered goods just before he executed said deed, he was unwilling to receive those goods and let them pass under the deed unless they were paid for, and consequently provision was made for such cases.

After respondent's interview with Mr. Gibson, and after he had determined to comply with his demand, he wrote to the plaintiffs the letter of 3rd January, 1883, filed with the bill, and wrote at the same time similar letters, or letters of the like import, to other of his creditors; and respondent's creditors were requested to meet him at his office in the city of Richmond on the 11th January, 1883. This was done with the hope that, upon exhibiting to them a full statement of the condition of his affairs, he might be able to make some arrangement with them that would be satisfactory, and that he could proceed to carry on his business.

On the day appointed, a number of his creditors did meet him according to notice, (that is, creditors holding about one-half of his indebtedness,) who, after talking over the business, and examining into his affairs, and seeing the deed which he had executed, expressed themselves as willing to compromise with the respondent, and to permit him to go on with his business, some of them kindly offering to sell him goods on credit; and respondent thought that he was in a fair way of making a satisfactory settlement, when, at this stage of the proceedings, the marshal came and served the process in this case, and thereupon all negotiation was broken off, and these creditors had no other way open to them than to take care of their claims as well as they could. Neither the plaintiffs nor the Mill Creek Distillery Co. were represented at the meeting in person or by proxy; nor did respondent receive any communication from either of them after his letter of the 3rd January, except a message delivered to him from the plaintiffs by Charles H. Harvey, their agent here, to the effect that they had cheerfully complied with his request to withdraw the note falling due on the 1st January, and that they regretted to hear of his trouble, and that it was not their habit to push their customers to the wall when they got into difficulties. So respondent was much surprised that, without a word of warning, without any farther demand upon him, the process in

this case should have been sued out and served. This process was issued, as respondent has been informed, at Alexandria on the 10th inst., but was not served, as already stated, until the next day. Respondent also farther states that so soon as it was thus ascertained that no arrangement could be made with his creditors, the said deed (a copy of which is herewith exhibited, marked A B, and prayed to be taken as a part of this answer) was duly recorded in the Chancery Court of the city of Richmond.

The allegation that it was made with intent to hinder, delay and defraud his creditors is not true, and has no foundation whatever to rest upon. Respondent by that deed conveyed all the property of every sort which he owned, and all of his *choses in action* and claims of every sort belonging to him, with the exception of a single set of chamber furniture that has been in use for at least five years, and is not worth more than one hundred dollars, and probably not as much. Respondent lives in a house which he rents already furnished, and none of the furniture, except that mentioned, belonged or belongs to him, and even that is not liable to levy; and if it had been conveyed by said deed it was not liable to be sold thereunder, as he is a house-keeper and a head of a family, and is entitled by law to have certain property much more than that exempt from levy or distress and from being sold under a trust deed. And while, by the terms of said deed, preference is given to his endorsers over his general creditors, he was, and is advised, that he had the perfect legal right to make such preference, and he believed that under the circumstances it was his duty, as an honorable man, so to do, so soon as he ascertained that Mr. Gibson insisted upon his demand.

Respondent further states that Irvin Watkins was selected as trustee because of his familiarity with his business, and because it was believed that he would be able to realize more from the assets than any other person. He is a gentleman of unquestionable integrity, and if permitted so to do, will

honestly and faithfully, and respondent believes, skillfully execute the trust confided to him. He states that all the property and all the assets conveyed by said deed have been carefully preserved in order that they may be sacredly applied to the purposes of the trust created thereby; and, although said deed was not recorded until the 11th inst., yet, from the time that it was executed, every dollar that has been received from the sales of any of the goods conveyed or collected on account of previous sales was placed in bank to the credit of the trustee, and no part of it was used, except for the purposes of, and in accordance with the terms of the trust. One check was drawn to pay an invoice of goods that arrived after the deed was executed.

So respondent denies that he went on with his business after making said deed as he did before. On the other hand, he alleges that he regarded and treated the deed as in full force from the time it was executed.

Respondent further states that the said deed was shewn to those of his creditors who desired to see it on the day they met at his office, and no effort whatever was made to conceal it. If the plaintiffs had been at that meeting, or had been represented there, they or their agent could have seen it, and he denies positively that there is any truth whatever in the insinuation to the contrary.

This respondent also states that the conveyance of the *choses in action*, notes, debts due him, and everything he did convey by said deed, except the goods and chattels therein mentioned, was and is valid from the very time that the said deed was executed, and that the recording said deed was not essential to its validity so far as the said choses in action, etc., other than the goods and chattels were concerned. The Registry Act of the State of Virginia referred to makes provision only in respect to "goods and chattels," which words in said act include only personal property which is visible, tangible, and movable.

Respondent has omitted to state in the proper connection

the fact which he now asserts, to wit: That on the 5th day of January, 1883, he caused a statement to be made out from his books of all his assets, rejecting from the outstanding accounts all doubtful ones, and putting down the stock on hand at cost price, and a statement of all his liabilities, and made affidavit to the correctness of the same before a notary public, and sent the said statement, or copies thereof, to the plaintiffs, the Mill Creek Distilling Company, W. W. Johnson and Company, and his other creditors, by mail on the 5th day of January, 1883, a copy of which statement, marked C D, is herewith exhibited, and prayed to be taken as a part of this answer.

So it appears that the plaintiffs and the Mill Creek Distilling Company and his other creditors, were fully informed of the state of his affairs before the institution of these proceedings.

Respondent states that he has concealed nothing from his creditors, that he regarded as at all important that they should know; that it will be seen from said last mentioned statement, that his assets were estimated at $49,094,89, of which the cost price of the stock on hand was $12,460,03, and the residue were outstanding accounts, etc., or *choses in action*.

In conclusion, this respondent positively denies every allegation in either of the bills which conflicts with the statements contained in this answer, and he asserts he has acted in good faith toward all of his creditors, not only during his recent difficulties, but during the whole time that he has been in business; and when the difficulties came upon him, he has honestly and faithfully surrendered to his creditors all his property of every sort and description whatever, with the exception already stated, giving preference only to those who were his sureties.

There is no allegation whatever in either of the bills that the trustee selected by him was not a fit and proper person to be entrusted with such a trust. Respondent prays that

the injunction heretofore awarded be dissolved, that the bills of the plaintiffs be dismissed, and that he be hence dismissed with his costs.

E. COURTNEY JENKINS.

STATE OF VIRGINIA, CITY OF RICHMOND, TO-WIT:

This day personally appeared before me, B. Rand. Wellford, a notary public for the city aforesaid in the State of Virginia, E. Courtney Jenkins, whose answer to bills of complaint, original and amended, exhibited by Henry H. Shufeldt & Co., against him and others is hereto annexed, and made oath that the statements made in said answer, so far as made of his own knowledge, are true, and so far as made upon knowledge or information derived from others, he believes to be true.

Given under my hand this 18th day of January, 1883.

B. RAND. WELLFORD, *N. P.*

TRUST DEED.

This deed, made this 5th day of January, in the year 1883, between E. Courtney Jenkins, of the city of Richmond, of the first part, Irvin Watkins, of the said city, of the second part, (and the several persons being *bona fide* creditors of the said E. Courtney Jenkins, who shall execute and acknowledge this deed within sixty days from the date thereof, of the third part). Whereas the said E. Courtney Jenkins has for a long time carried on business in the said city of Richmond as a distillers' agent and wholesale liquor dealer, and George Gibson, of the county of Henrico, Virginia, W. F. Jenkins, sometimes called William F. Jenkins, of the said city of Richmond, Joseph N. Jenkins, of the city of Baltimore, and Michael Jenkins, George C. Jenkins and Joseph W. Jenkins, Jr., doing business in the said city of Balti-

more, under the style, firm and name of Jenkins Brothers, have largely endorsed as an accommodation for the said E. Courtney Jenkins, to enable the said E. Courtney Jenkins to carry on thus far said business; and whereas the said E. Courtney Jenkins has become embarrassed, and deems it best for his several creditors to make an assignment of all of his property as hereinafter set forth, in trust for his several creditors, as he believes it impossible for him to carry on said business without greater loss to his said creditors. Now, therefore, this indenture witnesseth, that for and in consideration of the premises, and of the sum of five dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, the said E. Courtney Jenkins doth grant, sell and convey unto the said Irvin Watkins the following property belonging to him, the said E. Courtney Jenkins, viz.: All the goods, wares and merchandise, especially all wines and liquors, and all office and store furniture and fixtures, now on the premises known as number 113 South Fourteenth Street in the city of Richmond, or thereto belonging; also all goods, wares and merchandise of every description that may now be standing in the name of the said E. Courtney Jenkins, or of E. Courtney Jenkins & Company, in the said State of Virginia, or elsewhere in the United States of America, in transitu or in any bonded or other warehouse; also all bonds, bills, notes, securities and vouchers for or effecting the payment of money belonging to or held by the said E. Courtney Jenkins, on account of the sale of any goods, wares or merchandise sold by him in or on account of said business; also all other rights, estates, interests, property, claims and demands of money now due or to become due, of what nature or kind soever and wheresoever, in or on account of said business of distillers' agent and wholesale liquor dealer; and all rights, interests, property, claims and demands that the said E. Courtney Jenkins may have against the said William F. Jenkins, or the firm of Baldwin & Jenkins, late of the said

city of Richmond, of which the said William F. Jenkins, until its dissolution, was a partner; and all rights, interests, claims and demands that the said E. Courtney Jenkins may have under or by reason of any trust deed executed by the said William F. Jenkins, now or hereafter, to secure his several creditors, by reason of or on account of the said E. Courtney Jenkins having drawn, at the request of, and as an accommodation to the said William F. Jenkins, three negotiable notes to the order of the said William F. Jenkins, endorsed by the said William F. Jenkins, sometimes called W. F. Jenkins, one of said notes being for the sum of, viz.: $2,468, dated 24th July, 1881, payable four months after date; another of said notes for the sum of, viz.: $1,790, dated 27th July, 1881, payable four months after date, and the remaining one of said notes for the sum of, viz.: $1,185, dated 1st September, 1881, payable three months after date, said three notes together aggregating, viz.: five thousand four hundred and forty-three dollars. Upon trust, nevertheless, to collect, sue for, demand, receive or recover by suit or otherwise, in the name of the said E. Courtney Jenkins, or said trustee, all such sum or sums of money as may be due and owing to the said E. Courtney Jenkins on account of or by reason of said bonds, bills, notes, securities, rights, estates, interests, claims, demands and choses in action hereby conveyed, and to sell and dispose of with all convenient speed, at public auction or otherwise, as said trustee shall deem best for the objects of this trust, all of said goods, wares and merchandise, and other property hereby conveyed, selling the same for cash, or on the usual terms of credit generally given in the wholesale trade of wines and liquors, taking from all purchasers on credit ample security. And from the payments made on account of said sales and collections, after the discharge and payment by said trustee of all reasonable costs and charges and expenses in the execution of this trust, including the cost of recording this deed, of all rent now due or hereafter to be-

come due for said premises wherein said property is kept or stored while said trustee is using and occupying said premises in executing said trust; and also after the payment and discharge of a reasonable salary to any book-keeper employed by said trustee, and wages due to any servant or servants employed by said trustee in carrying out said trust; and the payment in full of all money or moneys due for all and any goods in transitu, or invoiced and unsettled for by negotiable note or notes at the date of this indenture; and also after the payment of all taxes required to be paid on account of said property hereby conveyed, and the payment of a reasonable commission to himself, the said Irvin Watkins, for executing this trust, the said trustee shall out of the balance of said proceeds of sale make payment in the following order of the debts of the said E. Courtney Jenkins, to-wit:

First. In full of all notes endorsed by the said George Gibson for the said E. Courtney Jenkins, now due or hereafter to become due, believed to aggregate the sum of twenty thousand dollars.

Second. Of all money now due to the said George Gibson or others on account of any loan or advance made by him or others to the said E. Courtney Jenkins, to enable him, the said E. Courtney Jenkins, to carry on said business.

Third. In full of all notes endorsed by the said W. F. Jenkins or William F. Jenkins for the said E. Courtney Jenkins, now due or hereafter to become due, excepting the three negotiable accommodation notes above described, to which no preference shall be given by said trustee until he shall have received from the said William F. Jenkins, or the late firm of Baldwin & Jenkins, what may be due and coming to the said E. Courtney Jenkins on account of said three accommodation notes. The notes herein preferred as endorsed by the said William F. Jenkins, are believed to amount in the aggregate to six thousand dollars, more or less.

Fourth. In full of all notes endorsed by the said Joseph W. Jenkins for and on account of the said E. Courney Jenkins, which are believed to amount in the aggregate to two thousand and fifty dollars, more or less.

Fifth. In full of all notes endorsed by the said Jenkins Brothers for and on account of the said E. Courtney Jenkins, which are believed to amount in the aggregate to four thousand dollars, more or less.

Said trustee shall pay all of said notes, endorsed as aforesaid, and all money or moneys loaned or advanced as aforesaid, in the order in which they are respectively classed, or received (named); and no creditor or creditors of a subsequent class shall be paid until all named or classed previously have been paid in full. The object being to give said endorsers or creditors the priority and preference in which they are respectively classed or named; although it is fully believed that the property hereby conveyed will be amply sufficient to pay all of said creditors above named or classed in full, and to leave a large balance for the general creditors of the said E. Courtney Jenkins, hereinafter named.

Sixth. After the payment of all creditors above named or classed in full, said trustee shall pay in full all other creditors of the said E. Courtney Jenkins, who shall come in and execute this deed within sixty days from the date thereof, if the said balance will allow payment in full; but if it shall not be sufficient fully and entirely to pay off and satisfy each and all of said general creditors, then the said trustee shall pay said general creditors of the said E. Courtney Jenkins *pro rata*, in proportion to the amount due and owing to, or to become due and owing to, each of said general creditors. And it is covenanted and agreed by and between the said parties to this indenture, that the said respective creditors, parties hereto of the third part, in performance of their part of the aforesaid covenant and agreement, and in consideration of the assignment heretofore made and entered into by this indenture by the said E. Courtney Jenkins, each

for himself, and every one of them for themselves respectively, and for their respective personal representatives and assigns, doth hereby accept and take the said property hereinbefore assigned and conveyed to said trustee for them respectively, in full payment, satisfaction and discharge of all their respective claims and demands against the said E. Courtney Jenkins; and doth, by these presents, fully, clearly and absolutely relinquish, exonerate, discharge, and forever quit claim unto the said E. Courtney Jenkins, his heirs and personal representatives; as, also, all and all manner of action and actions, suit and suits, which they, the said creditors executing these presents, or any or either of them, their or any of their personal representatives or assigns now have, ever had, or at any times hereafter can, shall or may have against the said E. Courtney Jenkins or his personal representatives, for, or by reason, or on account of their said respective debts so due to them as aforesaid, or for, or by reason, or on account of any other matter, claim, demand, cause, or thing whatsoever, antecedent to the day of the date of these presents.

In witness whereof the said parties have hereunto set their hands and affixed their seals on the day and year first herein written as the date hereof.

E. COURTNEY JENKINS. [SEAL.]
E. COURTNEY JENKINS & CO. [SEAL.]
IRVIN WATKINS. [SEAL.]

STATE OF VIRGINIA—CITY OF RICHMOND, TO WIT:

I, James R. V. Daniel, a notary public for the city aforesaid, in the State of Virginia, do hereby certify that E. Courtney Jenkins, whose name as E. Courtney Jenkins, and E. Courtney Jenkins & Co., is signed to the writing above, bearing date on the 5th day of January, 1883, acknowledged the same before me in my said city.

Given under my hand, this 5th day of January, 1883.

J. R. V. DANIEL, *N. P.*

CITY OF RICHMOND, TO WIT:

In the office for the Court of Chancery for the said city, the 11th day of January, 1883, this deed was presented, and, with the certificate annexed, admitted to record, at twenty minutes past one o'clock P. M.

Teste:

BENJ. H. BERRY, *Clerk.*

A copy. *Teste:*

BENJ. H. BERRY, *Clerk.*

ASSETS.

Outstanding accounts, all doubtful ones being omitted	$36,634 86
Stock as per inventory, cost price	12,460 03
	$49,094 89

LIABILITIES.

Bills payable, merchandise	$37,444 25
Open accounts	2,455 18
Accommodation endorsements	31,451 00
	$71,350 43

Sworn to before W. S. Dashiell, notary public, January 5th, 1883.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

HENRY H. SCHUFELDT & CO.,

vs.

JENKINS AND OTHERS.

The answer of Irvin Watkins to the bill of complaint exhibited against him and others in said court.

This respondent, reserving to himself all rights of excep-

tion to said bill, and not waiving the demurrer hereto, but insisting on it for answer to said bill, saith that he denies that there was any fraud in the execution of said deed of trust referred to in said bill of complaint, or any intention thereby to delay, defraud or hinder creditors by the said E. Courtney Jenkins.

This respondent only consented to act as trustee in said deed because he had been for a long time the confidential clerk and book-keeper of the said E. Courtney Jenkins, and being thus well acquainted with his business, it was considered best for the benefit of all of his creditors (as this respondent was well acquainted with the responsibility of the purchasers from said E. Courtney Jenkins), that this respondent should undertake said trust. But this respondent did not ask for it, or in any way solicit it, as the time required to carry out said trust could be much more profitably employed otherwise.

This respondent has long known the said E. Courtney Jenkins and George Gibson, and has always known them to be high toned, honorable men, and well knows that they would be the last men to act fraudulently, or in any way to be guilty of a fraud; and it was in consequence of this respondent's high estimate of those gentlemen that he undertook to act as said trustee.

And this respondent saith that as to the property coming into his hands as said trustee, he has carefully kept it, and in no way parted with any part thereof, except as set forth in the answer of said E. Courtney Jenkins, which he prays may be so far taken as a part of this respondent's answer.

And again denying all fraud in the execution of said trust deed, and having fully answered said bill of complaint so far as this respondent is concerned, he begs hence to be dismissed with his reasonable costs herein incurred, and this respondent will ever pray, &c.

H. H. Marshall.
John Dunlop,
Counsel for defendant, Irvin Watkins.

STATE OF VIRGINIA, CITY OF RICHMOND, TO-WIT:

This day personally appeared before me, B. Rand. Wellford, a Notary Public for the city aforesaid, in the State of Virginia, Irvin Watkins, whose answer to a bill of complaint in Chancery is hereto annexed, and made oath that the statements made in the said answer, so far as made of his own knowledge, are true, and so far as made upon knowledge or information derived from others, he believes them to be true.

Given under my hand this 18th day of January, 1883.

B. RAND. WELLFORD, N. P.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

HENRY H. SHUFELDT & CO.

vs.

JENKINS AND OTHERS.

The answer of George Gibson to the Bill of the Com plainants exhibited in said Court against him and others.

This respondent, reserving to himself all rights of exception to said bill, and not waiving his demurrer thereto, but insisting on it, for answer thereto saith:

That he knows nothing of the correspondence of the defendant, E. Courtney Jenkins, one of the defendants, with said plaintiffs; but admits that the letter dated 26th December, 1882, was written by John Dunlop, Esqr., as counsel for this respondent, and that the deed of trust, executed 5th day of January, 1883, by the said E. Courtney Jenkins, was executed with the knowledge and at the request of this respondent.

But this respondent denies that there was any fraud in the execution of said deed of trust or any fraud in any way connected therewith of which this respondent had any notice or knowledge.

This respondent had for very many years been an accommodation endorser of the said Jenkins, receiving no remuneration or consideration therefor, simply endorsing for the said Jenkins as a friend and to enable him to carry on his business, as more fully set forth in said defendant Jenkins' answer, which, so far as it states as to said accommodation, this respondent adopts and begs that it may be taken as part of this respondent's answer.

This respondent further saith that he became such endorser for said defendant when he first commenced said business, to-wit: in the year 1873, and afterwards, to-wit: in the year 1877, when said E. Courtney Jenkins dissolved his co-partnership with his former partners, J. H. Capers and W. F. Jenkins, by buying them out, this respondent then, to enable said E. Courtney Jenkins to meet his obligations and to carry on said business, very largely endorsed as an accommodation endorser for him, the said E. Courtney Jenkins, and has so continued, since that last-named date, until the notes so endorsed by this respondent amount to at least $20,000, if not more, as this respondent will be fully able to show.

This respondent says it was only by his said endorsements that said E. Courtney Jenkins was enabled to carry on said business, amounting in a little over ten years to upwards of, to-wit, $800,000, whereby said plaintiffs derived large profits, and no benefit whatever accrued to him. That in consideration of the large amount for which said notes so endorsed called, and in consideration that said endorsements had been solely for the benefit of said E. Courtney Jenkins and said plaintiffs, and in consideration of other circumstances stated in the letter of 26th December, 1882, by his counsel, John Dunlop, Esqr., this respondent thought it but right that he should be fully secured before all others, as he was informed and believes that the laws of Virginia allowed him to be, and as was but just, right and equitable; and this respondent denies that he knew of any intention on the part of said E. Courtney Jenkins to execute any deed putting this respondent

on an equal footing with all other creditors after said letter of 26th December, 1882, was written by his counsel, the said John Dunlop.

This respondent fully approves of the trustee, Irvin Watkins, named in the deed of trust executed on the 5th of January, 1883, and asks of the court that said trustee be allowed and authorized to execute said trust.

And this respondent now having fully answered said bill of complainant, and again denying all fraud on his part, and all fraud on the part of any one else of which this respondent had any notice or knowledge, this respondent begs hence to be dismissed, with his reasonable costs herein incurred.

And this respondent will ever pray.

J. H. MARSHALL,
JOHN DUNLOP,
Counsel for Defendant, George Gibson.

STATE OF VIRGINIA, CITY OF RICHMOND, TO-WIT:

This day personally appeared before me, M. F. Pleasants, a U. S. Commissioner for the city aforesaid, in the State of Virginia, George Gibson, whose answer to a bill of complaint in chancery is hereto annexed, and made oath that the statements made in the said bill, so far as made of his own knowledge, are true, and so far as made upon knowledge or information derived from others, he believes them to be true.

Given under my hand this 18th day of January, 1883.

M. F. PLEASANTS,
U. S. Com'r, East. Dist. Va.

SECOND AMENDED BILL.

IN THE UNITED STATES CIRCUIT COURT FOR THE EASTERN DISTRICT OF VIRGINIA.

To the Honorable Judges of said Court:

Humbly complaining, sheweth unto your Honor your Orators, Henry H. Shufeldt & Co., that heretofore, to-wit, on the 10th day of January, 1883, your Orators filed their bill against E. Courtney Jenkins, Irvin Watkins, trustee, and George Gibson, citizens of the State of Virginia, setting forth in brief that the said E. Courtney Jenkins, doing business under the name and style of E. Courtney Jenkins & Co., was indebted to your Orators in a large sum of money, to-wit, the sum of $3,465.78, as set forth in detail in said bill. Your Orators then referred in said bill as part thereof to a letter from said E. Courtney Jenkins of the 29th of December, 1882, and to another letter of said Jenkins to your Orators of the 3d day of January, 1883, and also to a copy of a letter from John Dunlop, Esq., to said Jenkins of the 26th day of December, 1882, which was enclosed in one of said letters from said Jenkins to your Orators. Your Orators further state that in said bill they averred that, in compliance with the request of said Jenkins, and confiding in the promise of said Jenkins contained in said letter of December 29, 1882, they had withdrawn from bank the note of said Jenkins to your Orators maturing January 2, 1883; that to their surprise and astonishment they were informed by said letter of January 3, 1883, of said Jenkins to your Orators that said Jenkins had made a deed of trust at the solicitation of said George Gibson, the alleged accommodation endorser of said Jenkins, giving a preference to him,

and inviting your Orators and other creditors to meet said Jenkins in Richmond about his affairs. Your orators further charge in said bill that said deed of trust was unrecorded, and while unrecorded was null and void as to your Orators and other creditors; that your Orators had not seen said deed, and were not informed of the contents thereof except from outside sources, as set forth in said bill; that the said Irvin Watkins, the trustee, although the said deed was unrecorded, and while so void as to your Orators was proceeding to execute the trusts of said deed, and to wind up the business of said E. Courtney Jenkins, doing business as aforesaid. And that such proceedings, under the circumstances detailed in said bill, were in derogation of the rights of your Orators, and fraudulent and void as to them, and that, unless restrained by the injunction of this Honorable Court, such proceedings would result in irreparable loss and injury to your Orators, inasmuch as said Jenkins was insolvent, all of which will more fully and at large appear upon reference being had to said original bill of your Orators.

And after the filing of said original bill the said deed of trust to Irvin Watkins, trustee, was placed upon record, and thereupon your Orators filed an amended bill, in which is set out that said deed of trust was filed for record on 11th day of January, 1883; that your Orators had had no access to said deed of trust, nor could procure a copy thereof when said original bill was filed.

And your Orators further showed by way of amendment that said deed of trust, upon an inspection of it, showed that there were other preferred creditors besides said George Gibson, to-wit, Wm. F. Jenkins, Joseph W. Jenkins and Michael Jenkins, George C. Jenkins and Joseph W. Jenkins doing business under the firm name of Jenkins Brothers, and other persons and firms unknown to your Orators, were also preferred creditors. And your Orators prayed in said amended bill that said preferred creditors named therein,

and the said unknown preferred creditors, when known, might all be made parties defendant to said bill, and that each of them answer said amended and original bill, but oath or affirmation thereto was expressly waived.

And your Orators in said amended bill renewed the charge in said original bill that said trustee, Watkins, whilst said deed was unrecorded, did proceed to execute the trusts of said deed, and in part to dispose of some of the property conveyed by said deed, and your Orators renewed all other charges in said original bill contained, all of which will more fully and at large appear upon reference being had to said amended bill of your Orators.

And your Orators charge by way of amendment to said bill, that, prior to the execution of said deed of trust of the 5th day of January, 1883, to Irvin Watkins, trustee, to-wit: on the 6th day of October, 1881, said E. Courtney Jenkins made, executed and delivered a certain other deed of trust, dated the day and year last aforesaid, by which he conveyed to one John G. Spotts, of said city of Richmond, all goods, wares and merchandise of whatever description, now on the premises, known as No. 113 South Fourteenth street, in the city of Richmond, and all goods, wares and merchandise that may hereafter be brought on said premises by the said E. Courtney Jenkins, or on any other premises in the said city of Richmond occupied by him, the said E. Courtney Jenkins, hereafter, as a place of business instead of said premises, No. 113 South Fourteenth street; also all goods, wares and merchandise, especially wines and liquors of every description, that may be now or hereafter standing in the name of the said E. Courtney Jenkins, or E. Courtney Jenkins & Co., in any bonded or other warehouse, or in transitu therefrom, in the State of Virginia, or in any other State of the United States of America. Upon trust to secure to George Gibson and Joseph W. Jenkins, the payment of all notes endorsed for him, the said E. Courtney Jenkins, or that might hereafter be endorsed for him by said George Gibson

and Joseph W. Jenkins, or either of them, and to secure to said Joseph W. Jenkins the payment of three certain notes in said deed described, and aggregating the sum of $5,443.00, and providing that, upon default in the payment of any of said endorsed notes, or of any of said three notes held by said Joseph Jenkins, as aforesaid, then that said John G. Spotts, trustee, should make sale of said property thereby conveyed, and out of the proceeds, after discharging all expenses attending the execution of the trust, should "pay in full, principal and interest, all notes endorsed as aforesaid, and all of said three notes held as aforesaid, by the said Joseph W. Jenkins, . . and out of the balance, if any, shall pay in full, if possible, or ratably, if it cannot be in full, all of the general creditors of said E. C. Jenkins, and if there be any residue of said proceeds of sale after payment in full of said general creditors, shall pay said residue to the said E. Courtney Jenkins, his personal representatives or assigns, all of which will more fully and at large appear by said deed of October 6, 1881, the original of which is herewith exhibited, marked "X," and prayed to be taken as a part of this bill, said deed, duly executed by said E. Courtney Jenkins, and acknowledged before J. R. V. Daniel, a notary public, was shortly thereafter, as your Orators are informed, believe, and charge, delivered by said E. Courtney Jenkins, with the knowledge and consent of said George Gibson to said Joseph W. Jenkins, and upon the faith of said deed of October 6, 1881, so made, your Orators are informed, believe and charge that notes were, from time to time, in considerable amounts endorsed by said George Gibson and said Joseph W. Jenkins. Your Orators are further informed, believe and charge that said deed was made at the instance, request and with the full knowledge of said George Gibson; that the terms and provisions thereof were well known to said George Gibson, and consented to by him, and that said deed was drafted by, and is in the handwriting of John Dunlop, the counsel then and now of

said George Gibson, and that said George Gibson, on the faith of said deed of October 6, 1881, endorsed notes, which were understood and agreed by and between the parties thereto as secured by said deed. And your Orators are informed, believe and charge that all parties to that deed treated and regarded it and acted upon said deed as a deed regularly executed and delivered, and as a subsisting deed binding on said parties. Your Orators are further informed, believe and charge that said deed of October 6, 1881, was not recorded, by the suggestion of said George Gibson, and that the selection of said John G. Spotts as trustee therein was made upon the representation of said E. Courtney Jenkins, that said Spotts had consented to act as trustee, and acting upon that representation, the preferred creditors in said deed agreed with said E. C. Jenkins that said Spotts should be made the trustee therein. Your Orators are advised that said deed to Spotts, trustee, though void as to creditors upon its face, because reserving to the grantor therein powers inconsistent with its objects and adequate to their defeat, and void also as to creditors, because not admitted to record. Yet that said deed was good as between the parties thereto, to-wit: E. C. Jenkins, George Gibson, Joseph W. Jenkins, and John G. Spotts, trustee, and that said deed has not been released, discharged, or in any way impaired or annulled, but that as between the parties thereto, has continued to be from the day of its date and delivery by said E. C. Jenkins, as aforesaid, and is now in full force and effect as to the said parties thereto.

And your Orators are further advised that the said deed of October 6, 1881, being in full force and effect as between the parties thereto from its delivery as aforesaid, it operated from the date of its said delivery to vest in said Spotts, the trustee under it, the legal title to the property thereby conveyed; and that, therefore, no title passed by the subsequent deed of January 5, 1883, from E. C. Jenkins to Irvin Watkins, trustee, to the property intended to be conveyed by

it, said property having been previously conveyed to said Spotts, trustee, by the deed of October 6, 1881. And your Orators further charge that most, if not all, of the choses in action attempted to be transferred to said Irvin Watkins, trustee, under said deed of January 5, 1883, were the proceeds arising from the sale and disposition of property and effects conveyed by said deed of October 6, 1881, to said Spotts, trustee, and your Orators are advised that said choses in action did not, and could not, pass to said Irvin Watkins, trustee, under and by virtue of said deed of January 5, 1883, for the reason that, being the proceeds of property and effects of which said Spotts held the legal title, said choses in action as between the said parties belonged to said Spotts, as trustee. The said E. C. Jenkins having conveyed the property and effects to Spotts by a deed which was binding and obligatory as to him, the said E. C. Jenkins, he the said E. C. Jenkins had no more power or authority to assign and transfer said choses in action than he had to convey the property and effects of which they were the proceeds. He, the said E. Courtney Jenkins, had parted with the property, and as a necessary consequence had no title whatever to the choses in action which were the proceeds of said property.

Your Orators charge that the making, delivering and putting upon record the said deed of January 5, 1883, from E. C. Jenkins to Watkins, trustee, when all the parties thereto knew the fact of the existence of said deed of Oct. 6th, 1881, and what had been done under it, and the conduct of said E. C. Jenkins and George Gibson in reference to both deeds, show that said deed of January 5th, 1883, was made to delay, hinder and defraud creditors.

Your Orators will proceed to give a history of the transactions connected with said deeds, so far as they have been able to ascertain the same. Referring to what has been alleged in the original bill as to said deed of January 5th, 1883, without repeating the same further than has been

heretofore done. Your Orators are informed, believe and charge that about the time of the execution of said deed of Oct. 6th, 1881, to Spotts, trustee, the said E. Courtney Jenkins, needing further assistance in his business, agreed with the said George Gibson and Joseph W. Jenkins, that in consideration of certain accommodation to be extended by them to him, by becoming endorsers of his paper, he would give them a deed of trust upon all his property, and as to said Joseph W. Jenkins, he would also secure the payment of the said three notes, aggregating $5,433.00, money advanced by said Joseph W. Jenkins to take out of the Planters National Bank of Richmond said notes, which were discounted there, and which money said Joseph W. Jenkins used in taking up these notes for the purpose of benefitting said E. Courtney Jenkins, and for the benefitting of his credit with said Bank, where, as your Orators are informed, he then kept his bank account. The original draft of said deed of Oct. 6, 1881, as your Orators charge, was made by said John Dunlop, Esq., the then counsel of George Gibson, and the same was forwarded to said Joseph W. Jenkins for his examination, and was by him returned with certain pencil memoranda thereon, embodying provisions which had been agreed on, but omitted in said draft of the deed, and the deed, as amended and interpolated by said Joseph W. Jenkins, was redrafted, embodying the provisions called for in the said memoranda made by Joseph W. Jenkins, all of which, as your Orators charge, was done with the knowledge and consent of said George Gibson, and this deed of Oct. 6, 1881, thus redrafted by the said John Dunlop, Esq., and in his handwriting, was executed and delivered by said E. Courtney Jenkins as his act and deed. And from that time on till the execution of the deed of January 5, 1883, as your Orators charge, the said George Gibson and Joseph W. Jenkins did endorse the paper of said E. Courtney Jenkins upon the faith of, and relying upon the security given them by the said deed of trust of October 6th, 1881, to Spotts,

trustee. Your Orators are further informed, believe and charge that on the 9th day of January, 1883, said Joseph W. Jenkins, in whose possession said deed then was, forwarded the same to said John G. Spotts, accompanied with a letter of that date, directing said Spotts, trustee, to record said deed in the proper office for registration in the city of Richmond, and informing said Spotts of the embarrassed condition of said E. Courtney Jenkins—a fact which your Orators charge was well known to said Spotts; and said letter and deed of October 6th, 1881, your Orators charge, was received by said Spotts in Richmond on the morning of the 10th day of January, 1883. And the said John G. Spotts, trustee, who had previously, as they are informed, believe, and charge, agreed to act as trustee in said deed, paid no attention to the requirement of said Joseph W. Jenkins that he should have said deed recorded, and failed to record the same; but, as your Orators are informed, believe, and charge, turned said deed over to John Dunlop, Esq., the counsel of said George Gibson, who prepared and drafted the later deed to Irvin Watkins, trustee, which was made, as herein charged, at the instigation and persuasion of said George Gibson, who was, and is, the partner of said John G. Spotts, which last-named deed, if effectual, would operate to the utter overthrow of all rights which vested under the former deed; the said Spotts well knowing at the time he received said deed of October 6th, 1881, for record, from Joseph W. Jenkins, and at the time he delivered the same to said Dunlop, of the existence of the deed of January 5th, 1883, and of the circumstances under which it was executed, by whom it was drafted, and that it was at that time unrecorded. Yet the deed of January 5th, 1883, to Irvin Watkins, trustee, the clerk of E. Courtney Jenkins, was put on record the 11th day of January, 1883, in the afternoon, whilst the deed of October 6th, 1881, though in Spotts' hands on the 10th day of January, in the forenoon, with directions to record it, has never been recorded by said

Spotts, nor by said Dunlop, to whom the same was delivered; and though said Spotts did not refuse to accept the trust or notify Joseph W. Jenkins that he would not act as trustee or make any objections to the instructions of said Joseph W. Jenkins to record said deed, yet he did take and keep in his possession said deed of October 6th, 1881, until after the recording of the deed to Irvin Watkins, trustee; and only after writing said Spotts another letter, dated the 13th day of January, 1883, demanding to know why his previous letter had not received attention, was any response whatever gotten from said Spotts. And in his response to said Joseph W. Jenkins, dated the 15th day of January, 1883, as your Orators are informed, believe and charge, said Spotts informs him that he had received his previous letter, with the deed, a few days before, and had turned it over to John Dunlop, Esq., for what purpose is not revealed, although said Spotts well knew that Dunlop was representing interests adverse to said deed, and had already, under his partner's (Gibson's) instructions, actually prepared and had executed another deed, the intended effect of which was to overthrow the deed Spotts represented. Your Orators charge that the deed of January 5th, 1883, was made by E. Courtney Jenkins, at the instigation and urgent request and solicitations of said George Gibson, to hinder, delay and defraud the creditors of said E. Courtney Jenkins; they charge that said E. Courtney Jenkins yielded to the demands and persuasions of said George Gibson to secure him first and foremost; they charge that said deed of trust of October 6th, 1881, was kept off the record by the express sanction and request of said George Gibson; and they charge that it was the deliberate intent of said E. Courtney Jenkins and the said George Gibson, well knowing that the deed of October 6th, 1881, was in force as between the parties as aforesaid, putting both Gibson and Joseph W. Jenkins on the same footing as preferred creditors, and then providing ratably for all the general creditors, to overthrow said deed, and by the deed of January 5th,

1883, to prefer George Gibson over Joseph W. Jenkins for the full amount due him, including therein borrowed money claimed by Gibson, to the amount of $———, mentioned in second class of preferred debts in said deed, not secured at all in the deed of October 6th, 1881, and as to the larger part of Joseph W. Jenkins' debt, to-wit, $5,443 and interest, absolutely leaving the same out of the deed of January 5th, 1883, entirely, and also preferring in said last-named deed this borrowed money debt of $2,050 to Gibson, which, as before said, is not embraced in the deed of October 6th, 1881, over the general creditors who are secured therein, and, in fact, securing and preferring in said deed of January 5th, 1883, some of the general creditors over others, when by the deed of October 6th, 1881, they are all put on the same footing. Such acts, your Orators charge, are in utter violation of E. C. Jenkins' previous solemn deed, and George Gibson, in insisting and urging the execution of such a deed preferring him over Joseph W. Jenkins and over your Orators and other general creditors, as hereinbefore set forth, has lent his aid to get an advantage over Joseph W. Jenkins and the general creditors of E. C. Jenkins, contrary to his own solemn contract, as expressed in this prior deed, to which he is a party, and bound by its provisions, and he and said E. C. Jenkins, well knowing that said Joseph W. Jenkins and the said general creditors were ignorant of such attempted disposition of said property.

And your Orators believe and charge, that said George Gibson, who is and was then a partner of said Spotts in business, attempting and intending to defeat said deed of October 6, 1881, did so influence and control the said John G. Spotts, trustee, as to induce him to surrender said deed to John Dunlop, as aforesaid; and your Orators insist that said George Gibson is estopped from claiming any benefit whatsoever under said deed of January 5th, 1883. Your Orators further charge, that in addition to the grounds stated in the original bill, that said deed of January 5,

1883, is void, because by the deed of October 6, 1881, said E. C. Jenkins conveyed all his merchandise, of every kind, in his store or elsewhere in the United States, and all merchandise he might thereafter acquire at any time, and that this embraced all the property he had or owned, and having so conveyed, he thereby divested himself of all his property, and that he therefore had nothing to convey under the deed of January 5, 1883, and that said deed, for this reason, is a nullity. Your Orators further charge that this deed of January 5, 1883, was and is fraudulent and void as to your Orators, and that said George Gibson is estopped from claiming any benefit under it, because he has taken an advantage contrary to equity and good conscience against the general creditors of said E. Courtney Jenkins in this, that as to a part of his alleged claim, to-wit, the borrowed money secured in the second clause of said deed, he has induced said E. C. Jenkins to prefer the same over the general creditors, well knowing that the deed of October 6, 1881, was in full force, and that no provision was made therein preferring any borrowed money indebtedness to him, and well knowing that, after the preference given to notes endorsed by him and Joseph W. Jenkins, and three notes held by Joseph W. Jenkins, hereinbefore referred to, in said deed of October 6, 1881, that said property was dedicated to all the general creditors of E. Courtney Jenkins ratably. And your Orators further charge that said deed of January 5, 1883, is fraudulent and void in this, that it attempts to prefer some of the general creditors of E. C. Jenkins & Co. over the great body of said general creditors, when by the deed of October 6, 1881, they are all put on the same footing. And your Orators further charge that said deed of January 5, 1883, is fraudulent and void, because, in addition to being postponed to other creditors, as herein set forth, they are only entitled to participate in the remnant left, upon the express condition that within sixty days after the date of said deed, they shall absolutely and unconditionally release and discharge said E. Courtney Jenkins from all manner of indebtedness whatso-

ever, when by the deed of October 6, 1881, which was then in full force and effect between the parties thereto, the general creditors were entitled to participate in the property thereby conveyed without any such condition, and without any restrictions whatever. And your Orators charge that at the very moment that said E. C. Jenkins & Co. was treating for time and indulgence with the Mill Creek Distilling Company, and promising, in case of trouble, to give them a preference over all other creditors, and to make their debt secure, there was in existence, and in full force and effect, this deed of October 6, 1881, dedicating every dollar of his property to George Gibson and Joseph W. Jenkins, as preferred creditors, and the residue, if any, to the general creditors ratably, which condition of things made a preference of the Mill Creek Distilling Company claim, much less the securing of it, a matter of impossibility. And your Orators charge that said E. C. Jenkins & Co., whilst treating for time, and promising a preference and security to the Mill Creek Distilling Company, withheld from said Mill Creek Distilling Company all knowledge of the existence of said deed of October 6, 1881, which acts of said E. Courtney Jenkins—of which, as your Orators believe and charge, said George Gibson was cognizant and most of which he controlled—were a fraud upon and in violation of the rights of your Orators in the premises.

Your Orators therefore pray that, for the causes set forth in the original bill and first amended bill, and in this, the second amended bill, the said deed of trust of January 5th, 1883, be decreed by this court to be null and void as to your Orators, and as to all creditors situated as your Orators are. They hereby renew all the prayers for process and parties, for all proper orders and decrees, and for an injunction and a receiver, and for general relief made in the original bill and renewed in the first amended bill, as fully as if the same were here repeated.

H. H. Shufeldt & Co.,
by Charles H. Harvey, Agent and Attorney.

STATE OF VIRGINIA, CITY OF RICHMOND, TO-WIT:

This day personally appeared before me the undersigned, a Notary Public in and for the city and State aforesaid, C. H. Harvey, agent and attorney for H. H. Shufeldt & Co., and made oath that he believes the allegations of the bill hereto prefixed, in which H. H. Shufeldt & Co. are complainants, to be true.

Given under my hand this 25th day of April, A. D. 1883.

JOHN PICKRELL, N. P.

DEED OF TRUST, OCT. 6, 1881.

This deed, made this 6th day of October, in the year 1881, between E. Courtney Jenkins, of the city of Richmond, Virginia, of the first part, John G. Spotts, of said city, of the second part, and George Gibson, of the county of Henrico, Virginia, and Joseph W. Jenkins, of the city of Baltimore, Maryland, of the third part. Whereas the said George Gibson and Joseph W. Jenkins have, at the request of and as an accommodation to the said E. Courtney Jenkins, in order to enable him, the said E. Courtney Jenkins, to carry on his business in the said city of Richmond as a distillers' agent and wholesale liquor dealer, both individually and as a member of the firm of E. Courtney Jenkins & Company, endorsed numerous negotiable notes drawn by the said E. Courtney Jenkins and E. Courtney Jenkins & Company; and the said Joseph W. Jenkins is the holder of certain notes drawn by the said E. Courtney Jenkins & Company, and endorsed by William F. Jenkins, of the said city of Richmond, bearing date as follows, and for the following sums of money payable respectively as follows, to-wit: One

note dated 24th July, 1881, for $2,468, payable four months after date; another note dated 27th July, 1881, for $1,790, payable four months after date; and one other note dated 1st September, 1881, for $1,185, payable three months after date, said three last mentioned notes together aggregating in amount $5,443; and whereas farther, the said George Gibson and Joseph W. Jenkins have promised and agreed to endorse hereafter in like manner for the said E. Courtney Jenkins, on condition and in consideration that he, the said E. Courtney Jenkins, will fully secure the said George Gibson and Joseph W. Jenkins from and against all risk, liability or loss on account of any and all notes endorsed as aforesaid, or held as aforesaid, and will also save them harmless as to all notes to be endorsed by them or either of them for the said E. Courtney Jenkins, to enable him to continue to carry on his said business. Now, therefore, this indenture witnesseth that for and in consideration of the premises, and especially in consideration of the said George Gibson and Joseph W. Jenkins having undertaken and agreed farther to endorse for the said E. Courtney Jenkins, so as to enable him, the said E. Courtney Jenkins, to carry on his said business, he, the said E. Courtney Jenkins, of the first part, doth grant, sell and convey unto the said John G. Spotts, of the second part, the following personal property, to-wit: All the goods, wares and merchandise of whatsoever description now on the premises known as No. 113 South Fourteenth Street, in the said city of Richmond, and all goods, wares and merchandise that may be hereafter brought on said premises by the said E. Courtney Jenkins, or on any other premises in the said city of Richmond occupied by him, the said E. Courtney Jenkins, hereafter as a place of business, instead of said premises No. 113 South Fourteenth Street; also all goods, wares and merchandise, especially wines and liquors of every description, that may be now or hereafter standing in the said E. Courtney Jenkins, or E. Courtney Jenkins & Company, in any bonded or other warehouse,

or in transitu therefrom in the State of Virginia, or in any other State of the United States of America. Upon trust, nevertheless, that the said party of the second part shall and will permit the said E. Courtney Jenkins to remain in quiet and peaceful possession of said property hereby conveyed, and to use and dispose of the same in carrying on his business as aforesaid until default be made by him in the payment of any one or more of said notes endorsed or hereafter to be endorsed as aforesaid by the said George Gibson and Joseph W. Jenkins, or either of them, or of any one or more of said notes above particularly described now held by the said Joseph W. Jenkins, in whole or in part. And then, upon this further trust that the said John G. Spotts, his personal representatives or assigns, shall and will, so soon after the happening of such default of payment as the said George Gibson or the said Joseph W. Jenkins, their respective personal representatives or assigns shall request, after having advertised for ten days in some newspaper published in the city of Richmond the time, terms and place of sale, sell the said property hereby conveyed at public auction, or in such other manner as the said trustee shall deem most advisable, on said premises No. 113 South Fourteenth Street, in the said city of Richmond, or on such other premises in said city as the said party of the first part shall then occupy as his place of business, or in the event of his not then occupying any place of business in said city,* at such place as said trustee shall think most advisable, to the highest bidder, and upon the following terms, to-wit, for cash for all purchases not exceeding fifty dollars, and for all purchases exceeding fifty dollars upon a credit of sixty days, taking from the purchasers for said deferred payments good negotiable notes well endorsed; and out of the moneys arising from such sale, after satisfying the charges thereof and all other expenses attending the execu-

*The words, "in said city," on line 9 from the top of third page were interlined before signing of this deed. Witness, JOHN DUNLOP.

tion of said trust, shall pay in full, principal and interest, all notes endorsed as aforesaid, and all of said three notes held as aforesaid by the said Joseph W. Jenkins, and unpaid in whole or in part, and after payment in whole or in part whatever may be due or unpaid on any of said three notes held by the said Joseph W. Jenkins, and on any of said notes endorsed now or hereafter as aforesaid by the said George Gibson and Joseph W. Jenkins, or either of them, out of the balance, if any, shall pay in full, if possible, or ratable if it cannot be in full, all of the general creditors of said E. Courtney Jenkins; and if there be any residue of said proceeds of sale after payment in full of said general creditors, shall pay said residue to the said E. Courtney Jenkins, his personal representatives or assigns. Witness following signature and seal.

E. COURTNEY JENKINS, [SEAL.]

STATE OF VIRGINIA—CITY OF RICHMOND, TO-WIT:

I, J. R. V. Daniel, a notary public, for the city aforesaid, in the State of Virginia, do certify that E. Courtney Jenkins, whose name is signed to the writing hereto annexed, bearing date on the 6th day of October, in the year 1881, hath acknowledged the same before me in my said city.

Given under my hand this 6th day of October, 1881.

J. R. V. DANIEL, *Notary Public.*

or in transitu therefrom in the State of Virginia, or in any other State of the United States of America. Upon trust, nevertheless, that the said party of the second part shall and will permit the said E. Courtney Jenkins to remain in quiet and peaceful possession of said property hereby conveyed, and to use and dispose of the same in carrying on his business as aforesaid until default be made by him in the payment of any one or more of said notes endorsed or hereafter to be endorsed as aforesaid by the said George Gibson and Joseph W. Jenkins, or either of them, or of any one or more of said notes above particularly described now held by the said Joseph W. Jenkins, in whole or in part. And then, upon this further trust that the said John G. Spotts, his personal representatives or assigns, shall and will, so soon after the happening of such default of payment as the said George Gibson or the said Joseph W. Jenkins, their respective personal representatives or assigns shall request, after having advertised for ten days in some newspaper published in the city of Richmond the time, terms and place of sale, sell the said property hereby conveyed at public auction, or in such other manner as the said trustee shall deem most advisable, on said premises No. 113 South Fourteenth Street, in the said city of Richmond, or on such other premises in said city as the said party of the first part shall then occupy as his place of business, or in the event of his not then occupying any place of business in said city,* at such place as said trustee shall think most advisable, to the highest bidder, and upon the following terms, to-wit, for cash for all purchases not exceeding fifty dollars, and for all purchases exceeding fifty dollars upon a credit of sixty days, taking from the purchasers for said deferred payments good negotiable notes well endorsed; and out of the moneys arising from such sale, after satisfying the charges thereof and all other expenses attending the execu-

* The words, "in said city," on line 9 from the top of third page were interlined before signing of this deed. Witness, JOHN DUNLOP.

tion of said trust, shall pay in full, principal and interest, all notes endorsed as aforesaid, and all of said three notes held as aforesaid by the said Joseph W. Jenkins, and unpaid in whole or in part, and after payment in whole or in part whatever may be due or unpaid on any of said three notes held by the said Joseph W. Jenkins, and on any of said notes endorsed now or hereafter as aforesaid by the said George Gibson and Joseph W. Jenkins, or either of them, out of the balance, if any, shall pay in full, if possible, or ratable if it cannot be in full, all of the general creditors of said E. Courtney Jenkins; and if there be any residue of said proceeds of sale after payment in full of said general creditors, shall pay said residue to the said E. Courtney Jenkins, his personal representatives or assigns. Witness following signature and seal.

E. COURTNEY JENKINS, [SEAL.]

STATE OF VIRGINIA—CITY OF RICHMOND, TO-WIT:

I, J. R. V. Daniel, a notary public, for the city aforesaid, in the State of Virginia, do certify that E. Courtney Jenkins, whose name is signed to the writing hereto annexed, bearing date on the 6th day of October, in the year 1881, hath acknowledged the same before me in my said city.

Given under my hand this 6th day of October, 1881.

J. R. V. DANIEL, *Notary Public.*

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.—FOURTH JUDICIAL DISTRICT.

HENRY H. SCHUFELDT & CO.
AGAINST
E. COURTNEY JENKINS & CO. & ALS. } *In Equity.*

TO THE HONORABLE JUDGES OF THE SAID COURT:

The answer of E. Courtney Jenkins, one of the defendants, to the Second Amended Bill of Complaint exhibited against him and others in the Circuit Court of the United States for the Eastern District of Virginia, by Henry H. Schufeldt & Co. and others, complainants.

This respondent, now and at all times hereafter saving and reserving to himself all benefit and advantage of exception to said bill, and in no way waiving, but insisting on his answers heretobefore filed to the plaintiffs' original and first amended bills for answer to said second amended bill, saith:

That this respondent states that he heretofore, on the 18th January, 1883, filed his answer to the original and first amended bills of the plaintiffs, and he now re-affirms all the statements made therein, and prays that the said answer may be regarded as much a part of this as if it were herein again copied, so far as the same can be regarded as at all responsive to the plaintiffs' second amended bill.

In further answer to said second amended bill, he states that he admits the due execution by him of the deed of the 6th October, 1881, referred to in said second amended bill; and he further states, that he executed said deed in duplicate, and delivered one to John Dunlop, Esq., the attorney who drew it, and sent the other to Joseph W. Jenkins, at Baltimore.

This respondent never spoke to John G. Spotts, the trus-

tee named therein, in respect to said deed at that time. He never consulted him as to whether he would accept the trust, nor has he any reason to believe that George Gibson did so.

Respondent did not doubt that Mr. Spotts, if requested either by himself or Mr. Gibson to accept the trust, would have done so; but then he did not consult him, nor mention the subject to him, and does not believe that he had the slightest knowledge of the execution of said deed. That at the time said deed was executed, George Gibson was bound as accommodation-endorser for this respondent, to the extent of about $12,000; and Joseph W. Jenkins was bound as his endorser for notes aggregating about $5,000, besides the notes amounting to $5,443, mentioned in the deed of the 5th of January, 1883. Although the deed of the 6th of October, 1881, was intended to cover endorsements to be made subsequently by Gibson and Joseph W. Jenkins, the said Joseph W. Jenkins never endorsed any notes for this respondent, which increased his liability for him existing on the 6th October, 1881; for all endorsements made by him subsequently to that date were made simply in renewal of notes outstanding on the 6th day of October, 1881; and indeed, instead of his liabilities having been thereafter increased, they were, in fact, diminished by payments and curtails of outstanding notes for which he was bound about the sum of $3,000.

On the other hand, the liabilities of George Gibson were increased from $12,000, or thereabouts, to the amount of $21,700, besides interest, which is the principal sum which the said Gibson has actually paid as the accommodation-endorser of this respondent, as set forth in his, the said Gibson's, answer to the said second amended bill. And respondent says that the accommodation so afforded him by the said Gibson, to the extent of $8,700, or thereabouts, subsequently to the execution of the deed of the 6th October, 1881, furnished him with the means of reducing the lia-

bility of the said Joseph W. Jenkins by the said sum of $3,000, or thereabouts, as aforesaid.

Respondent further states that, by the deed of 6th October, 1881, he did not undertake to convey, and did not convey, anything but his stock of goods then on hand, and those that were subsequently purchased instead of them. And certain privileges and rights to this respondent over the said property so conveyed were reserved in said deed, which he is now advised, but then did not know, that they were inconsistent with the proper conveyance thereof. And respondent further states that the stock of goods on hand on the 6th October, 1881, and conveyed by said deed, was of a value somewhat less than the value of the stock on hand on January 5th, 1883. But the stock of goods on hand in October, 1881, had been disposed of before the deed of January 5th, 1883, was executed; and none of them were on hand at that date. It is true that there were fifty barrels of Monticello whiskey in the hands of Crichton & Co., of Baltimore, warehouse keepers, deposited in August, 1881, and they still remained in the hands of Crichton & Co. on 5th January, 1883. But their warehouse-receipt for said whiskey had long before January, 1883, been passed off to the Merchants and Planters Savings Bank, of Richmond, as collateral security for a note of this respondent, amounting to a much greater sum than the value of said whiskey. So that respondent states that, on 5th January, 1883, none of the goods which were on hand 6th October, 1881, were on hand on 5th January, 1883.

Respondent had no idea of doing anything that was not right and just and legal, so far he was informed. His intention was to act, legally and morally, with the utmost correctness. The said deed of 6th October, 1881, on the 5th of January, 1883, was unrecorded. He was informed and believed that it was therefore, and for other reasons appearing upon the face of the paper itself, of no effect; and in the execution of the deed of the 5th January, 1883, while he pre

ferred to put every creditor that he had on the same footing, he could not refuse the just demand of his friend, George Gibson (who had, at his instance and request, in good faith, without reward, or hope of any advantage whatever, but solely on account of his personal attachment and kindness, bound himself for the large sum of $21,700, for him), to secure him. The fact was that, by this accommodation on the part of George Gibson, this respondent's business had been kept up and carried on, and transactions with his creditors, resulting in large profits to them, had been carried on, and without such accommodation his business would necessarily have stopt; and the plaintiffs and his other general creditors would, this respondent believes, have suffered greater and heavier losses than they would have done if the deed of January, 1883, were carried into full effect.

This respondent, as already stated, anxiously desired to put all of his creditors on the same footing, and hoped that Mr. Gibson would consent that this should be done. But he did not, and, under the circumstances, he could not with propriety resist his demand that preference should be given him; which preference, under the laws of this land, he was and is advised he had due right to give.

As to Joseph W. Jenkins' notes for $5,443, they were in fact the debts due by William F. Jenkins, the son of Joseph W. Jenkins; and although this respondent appeared to be primarily bound upon said notes, and although he undertook to secure them by the deed of October, 1881, they were nevertheless, in truth and in fact, the debts of William F. Jenkins, from which this respondent never derived any personal benefit.

The truth was, when the deed of 5th of January, 1883, was executed, that of 6th October, 1881, was for the very reasons given by the plaintiffs themselves considered as null and void and of no effect.

Respondent has learned that Joseph W. Jenkins sent that deed to John G. Spotts, the trustee named therein, enclos-

ing it in a letter from Baltimore, where the said Joseph resides, bearing date the 9th January, 1883; that on the 11th January, 1883, the said Spotts came to this respondent and told him he had received that deed, and asked him what it meant. Respondent told him that he had better go and see Mr. John Dunlop, that he could tell him all about it, and Mr. Spotts left him, and it is for Mr. Spotts to say what he did with it.

This respondent has stated truly all his connection with it; and he has no reason to believe that George Gibson interfered in any way whatever, by advice or otherwise, to said Spotts, to induce him to withhold said deed from record.

This respondent does not know that the said Gibson knew that said Spotts had received said deed.

This respondent reiterates all the statements made by him in his answer heretofore referred to, and alleges that he acted in this whole matter with perfectly good faith; and he denies most positively and unequivocally every allegation of fraud, or intent on his part to hinder, delay or defraud his creditors, or any of them, by any deed which he has executed, by any act that he has done, or by any word that he has written or uttered. He knows that George Gibson has in good faith, without reward or the hope thereof, without compensation or expectation thereof, paid for him $21,700, as his endorser upon negotiable notes, and that he is entitled to that sum of principal money, with interest on the amount of each note as he paid them from the day of payment.

This respondent, in his original answer, has undertaken to explain the letters which he wrote to his creditor correspondents; but he asserts that no criticism upon these letters can be applicable to any act (of which he has any knowledge) of the said George Gibson. He has occupied simply the position of a creditor seeking to secure his debt by lawful means and in the manner provided for by the laws of the land; and so far as this respondent knows, in no other manner.

And having fully answered this, respondent prays hence to be dismissed with his costs.

E. COURTNEY JENKINS.

STATE OF VIRGINIA, CITY OF RICHMOND, TO-WIT:

This day personally appeared before me, a notary public for the city aforesaid, in the State of Virginia, E. Courtney Jenkins, whose answer is above written, and made oath that the statements contained in said answer, so far as made of his own knowledge, are true; and that such statements as are made therein, from knowledge or information derived from others, he believes to be true.

Given under my hand this 12th day of October, 1883.

B. RAND. WELLFORD, *Notary Public.*

The answer of George Gibson, one of the defendants to the second amended bill of complainant exhibited against him and others in the Circuit Court of the United States for the Eastern District of Virginia, by Schufeldt & Co., complainants.

This defendant, reserving to himself all right of exception to said original and two amended bills of complaint, and in no way waiving, but insisting on his answer to said original and first amended bill for answer to said second amended bill, saith that he had been, prior to the 6th day of October, 1881, the accommodation endorser of E. Courtney Jenkins, doing business under the style of E. Courtney Jenkins & Co., and was purely his accommodation endorser, without any hope or expectation of deriving, in the slightest degree, any personal benefit, pecuniary or otherwise, therefrom, and that he was aware that, on or about the 6th day of October, 1881, a deed of trust upon the goods, wares and merchandise of the said E. Courtney Jenkins had been executed by him with a view to secure him for his endorsements as aforesaid, and for such as he might thereafter make; and also to

secure Joseph W. Jenkins for certain endorsements for said E. Courtney Jenkins theretofore made and thereafter to be made.

But this respondent, while he knew that this was the general purport and intention of said deed, did not read it, nor was he at any time cognizant of the precise terms thereof; but having confidence in the said E. Courtney Jenkins, and in his promise to secure him as far as he could from any loss by reason of his endorsements for him, he was content and continued to endorse for him until the time arrived and the circumstances arose which are set forth by him in his answer to the original and first amended bills of the plaintiffs.

This deed of the 6th day of October, 1881, so far as was known to this respondent, was in the possession of John Dunlop, Esqr., who had the right, as respondent understood, to have the same recorded at any time that he thought proper. A duplicate of said deed, your respondent was informed, had been sent to said Joseph W. Jenkins, at Baltimore, so that the said Joseph W. Jenkins could, at any time that he saw fit, have the same recorded. This respondent had been informed and believes, and therefore states, that the notes of E. Courtney Jenkins & Co., endorsed by Wm. F. Jenkins, and held by Joseph W. Jenkins, mentioned as secured in the deed of the 6th day of October, 1881, were in fact the debts of Wm. F. Jenkins himself, for which the said E. C. Jenkins executed his notes at the instance of the said Wm. F. Jenkins, with the knowledge of the said Joseph W. Jenkins that they were so executed for the debts of the said Wm. F. Jenkins, who is the son of the said Joseph W. Jenkins.

And this respondent is further informed and believes that the said Wm. F. Jenkins made remittances from time to time to his father, the said Joseph W. Jenkins, of sums of money which should have been, if they actually were not, applied to the payment of said notes. The amount of said remittances is unknown to your respondent.

Your respondent is also informed and believes that the said Joseph W. Jenkins, although bound as endorser for the said E. Courtney Jenkins on other notes at the date of the deed of the 6th day of October, 1881, and although he may have endorsed other notes in renewal of such notes, for which he was bound at said date, yet the extent of his liability was thereafter very considerably reduced from what it was on the said 6th day of October, 1881.

Your respondent further states that he had nothing whatever to do with the details of the deed of trust of the 5th day of January, 1883, except to say to his counsel that he desired that he should be protected as endorser for E. Courtney Jenkins, as E. Courtney Jenkins had all along promised him he should be. He was aware of the fact that the deed of the 6th day of October, 1881, was void as to creditors and subsequent purchasers until it was recorded. He knew that the said deed conveyed only the goods and chattels on hand at the date thereof, and did not convey the *choses in action*; and, while it may have undertaken to convey goods thereafter acquired, respondent did not and would not rely upon such conveyance as satisfactory security to him, and he required that a good and proper deed, conveying all the assets of the said E. Courtney Jenkins, should be made. Your respondent is advised that, while Joseph W. Jenkins might be heard to complain of the difference between the two deeds, that of the 6th day of October, 1881, and that of the 5th day of January, 1883, that it is a matter which does not in the slightest degree concern the plaintiffs, who admit in their bill that the deed of the 6th day of October, 1881, was void.

Your respondent further states that, as the accommodation endorser of E. Courtney Jenkins, he had the right, legally, morally and equitably, to demand of E. Courtney Jenkins that he should secure him as his endorser, and to give him preference over all of his other creditors. The law of the land allows it; justice and right entitle him to

it; and it was only for the said E. Courtney Jenkins to say whether he would give him this preference or not. Your respondent had nothing whatever to do with other creditors; he was looking out for himself, and not for them, as he had a right to do. If the said E. Courtney Jenkins made a deed which, although intended to secure him, he for any reason whatever deemed insufficient, he had the right to demand, and (if he could) obtain another deed that would be sufficient. The plaintiffs in their bill claim that the deed of the 6th day of October, 1881, was not a proper deed, even if it had been recorded, because it reserved to the grantor powers over the property thereby intended to be conveyed that were illegal. Whether this be so or not, respondent relies upon the validity of the deed of the 5th day of January, 1883, which is not open to any such objection, and which has been duly recorded, and which is of full force and effect.

Your respondent denies, most emphatically and positively, that if the said deed of the 5th of January, 1883, is tainted in the slightest degree with any fraud whatever, he had, has had, and has now, no knowledge whatever of any such fraud or fraudulent taint, and is a *bona fide* creditor without notice of any fraud whatever. And while respondent believes that the deed was made *bona fide* by the said E. Courtney Jenkins, without any intent whatever to hinder, delay or defraud his creditors, or any of them, yet if the said E. Courtney Jenkins did execute such deed with such intent, he did it without the knowledge of, or any notice whatever, actual or constructive, to this respondent; and, so far as this respondent is concerned, the said deed is valid and binding, both at law and in equity.

Respondent had no knowledge whatever of any of the correspondence of the said E. Courtney Jenkins, which is alluded to by the plaintiffs in any of their bills, and cannot in any manner be held bound thereby.

This respondent understands, from the allegations in the

said second amended bill of the plaintiffs, that they insist,

First. That the deed of the 6th of October, 1881, was good between the parties; but,

Second. That, although good between the parties, it was void as to them; because (1st) it had not been recorded, and (2d) because it contained provisions which reserved to the grantor illegal power over the property conveyed thereby.

These grounds are distinctly, clearly and unequivocally taken by the plaintiffs.

Then, according to their own statement, they have no interest whatever in the question; for there is no pretence or allegation on their part that said deed was fraudulent. And no one except the parties between whom they allege positively that the said deed is good can undertake to claim anything under it; in other words, if the deed is void as to them, what difference does it make with them whether it be good or not between the parties to it?

It looks, upon reading the second amended bill, that the plaintiffs blow hot and cold; at one time they say the deed is null and void; at another time they say it is good between the parties. What difference does it make with them, if it is null and void as to them, whether it is good as between the parties or not?

Then this respondent is advised that these allegations amount to nothing. No one has a right to complain of the deed of the 5th of January, 1883, because it is in conflict with the deed of the 6th of October, 1881, except Joseph W. Jenkins. Certainly the plaintiffs have no right, unless they can show that it was fraudulent, which this respondent has denied, and now again most emphatically denies.

In January, 1883, the deed of the 6th of October, 1881, in effect amounted to nothing. The assets conveyed thereby had been long disposed of, and that which had been acquired thereafter the plaintiffs themselves say were not legally transmissible thereby. Nor could the *choses in action* which E. C. Jenkins & Co. had acquired, even by reason of the sale

of any of those assets, be legally regarded as passing under said deed.

So that, on the 5th of January, 1883, if the deed of the 6th of October, 1881, according to the plaintiffs' own showing, had been put on record, it would not have amounted to anything.

Respondent emphatically and positively denies that he has made any request, intimation or suggestion to John G. Spotts in respect to his recording or not recording said deed of the 6th of October, 1881; or that he ever knew that said Spotts had ever received the said deed, or a copy of it, or a letter relating to it, from Joseph W. Jenkins, until some time after the deed of the 5th of January, 1883, had been recorded. He denies that he ever told said Spotts that he had been made trustee in any deed, although he was his partner; and any allegations to the contrary of any of the above statements are false.

Respondent further states that he has, however, been informed by John G. Spotts, who is the trustee named in said deed of the 6th of October, 1881, that he never knew that such a deed was in existence until he received a letter from Joseph W. Jenkins, dated the 9th of January, 1883, enclosing said deed to him; that, knowing nothing about it, shortly after receiving it he carried it to John Dunlop, Esq., with the letter of the said Joseph W. Jenkins, when he was informed by said Dunlop that the deed was of no use, as he, the said E. Courtney Jenkins, had executed another deed, which had been recorded; and that said Spotts never signed said deed, never accepted in any manner the trust created thereby, and never before that time knew that such a deed existed, or that he was named therein as trustee.

Respondent has paid notes of E. C. Jenkins & Co. to the amount of $21,700, which he is ready to exhibit; which notes have been paid by him as the accommodation endorser of the said Jenkins, without ever having received or expecting any advantage whatever therefor, induced, as he was, to

endorse for the said Jenkins simply as his friend; and the said Jenkins now owes him the said sum of money, with the interest on the amounts of the said several notes respectively from the date of their maturity. He owes him nothing on account of borrowed money. Respondent never sold him goods; but the said indebtedness arises entirely and purely from his endorsing for him his paper for his accommodation. And the money thus raised by said Jenkins was used by him in carrying on his business with the plaintiffs and his other creditors, from which they have derived, as he is informed and believes, considerable profits.

Respondent deems it right farther to state that he became bound, and has had to pay, for said Jenkins a much larger amount of money than he was bound for him in October, 1881, while he is informed that Joseph W. Jenkins is bound for a less sum than he was in October, 1881.

But respondent insists upon his clear legal rights as a creditor secured by a deed conveying property for his indemnity, without any knowledge whatever, or any notice, of any fraud, or any other impropriety of any sort, and asks the court to see that his rights are properly protected.

And this respondent, having fully answered every part of said bills which he is advised it was material for him to answer, prays hence to be dismissed with his costs.

GEO. GIBSON.

STATE OF VIRGINIA, CITY OF RICHMOND, TO-WIT:

I, B. Rand. Wellford, a Notary Public in and for the said city, in the State of Virginia, do hereby certify that George Gibson this day personally appeared before me, in my said city, and made oath that the statements made by him in the foregoing answer, so far as they purport to be made upon his own knowledge, are true, and so far as they purport to be made from information derived from others, that he believes them to be true.

Given under my hand this 11th day of October, 1883.

B. RAND. WELLFORD.

ORIGINAL BILL OF MILL CREEK DISTILLING COMPANY.

To the Honorable Judge of the Circuit Court of the United States for the Eastern District of Virginia:

Humbly complaining, sheweth unto your Honor your Orators, the Mill Creek Distilling Company, a corporation created by and doing business in the State of Ohio, and a citizen of the said State of Ohio, that E. Courtney Jenkins, doing business under the name and style of E. Courtney Jenkins & Co., a citizen of the State of Virginia, and residing and doing business in the city of Richmond, in the Eastern District of Virginia, is justly indebted to your Orators in the sum of five thousand nine hundred and seventy-two $\frac{17}{100}$ dollars, evidenced by seven several notes, the first of which is dated October 25th, 1882, at four months, for $864.50, and which will mature February 28th, 1883; another dated October 14th, 1882, at four months, for $1,500, and which will mature February 17th, 1883; another dated November 18th, 1882, at four months, for $1,598.50, and which will mature on 21st March, 1883; another dated November 25th, 1882, at four months, for $768.67, and which will mature on 28th March, 1883; another dated December 20th, 1882, at four months, for $394.90, and which will mature on 23rd April, 1883; and another dated December 8th, 1882, at thirty days, for $266.08, and which matured on 10th January, 1883; and another dated December 10th, 1882, at thirty days, for $579.50, and which will mature on 12th of January, 1883, a memorandum of which notes is herewith filed as exhibit "A," and prayed to be taken as a part of this bill, and the notes themselves will be filed whenever re-

quired by the court, or shall be necessary by the requirements of this case.

Your Orators further state, that the said E. C. Jenkins & Co. has been indebted to your Orators, for some time past, in a large sum of money; that about one year ago the said E. C. Jenkins & Co. was indebted to your Orators in the sum of $5,126.59, and that the said E. C. Jenkins, being then unable to meet his said indebtedness to your Orators, and being apprehensive, that if your Orators pressed him for the debt he owed, that he would be compelled to suspend business, promised your Orators that if your Orators would extend the time of the payment of said debt, that he, said E. C. Jenkins & Co., would, in the event that he would be compelled to suspend business, give to your Orators a preference over other creditors; and your Orators aver, that confiding in the representation and promise aforesaid, your Orators did extend the time of payment of the said sum of $5,126.59 for about one year. And your Orators further state, that your Orators not only granted the extension aforesaid, but in order to aid the said E. C. Jenkins & Co., in the prosecution of his business, and to keep up his credit, your Orators has sold other goods to the said E. C. Jenkins & Co., amounting to the sum of $845.58, making, together with the sum of $5,126.59, the aggregate of $5,972.17, first above demanded.

And your Orators further say, that the said E. C. Jenkins & Co. sent to your Orators a letter, dated the 3rd of January, 1883, enclosing the copy of a letter from John Dunlop, Esq., dated December 26th, 1882, addressed to E. C. Jenkins & Co., which letter of said John Dunlop was a demand on behalf of George Gibson, an alleged accommodation endorser of E. C. Jenkins & Co., to execute a deed of trust to secure him as such endorser. In said letter of E. C. Jenkins & Co., of 3rd of January, 1883, to your Orators, after a long preliminary statement, he says he has felt compelled to submit to his request to execute a deed of trust

to secure him in preference to other creditors, and he wishes to request, on behalf of the trustee, Mr. Irvin Watkins, that your Orators would attend a general meeting of the creditors of said E. C. Jenkins & Co. A copy of said letter of John Dunlop, and the original letter of E. C. Jenkins & Co., of 3rd January, 1883, marked respectively exhibits "B" and "C" are herewith filed and prayed to be taken as parts of this bill. Your Orators were surprised and astonished to learn from the said letter of the 3rd of January, 1883, that said E. Courtney Jenkins & Co. had made a deed of trust to said Irvin Watkins, as trustee, securing to George Gibson a large sum of money. From one source the amount secured to said George Gibson is stated to be about $10,000, and from another source your Orators have learned that it is about $23,000; and that by said deed of trust, said E. Courtney Jenkins & Co. has given a preference to said George Gibson over all of his other creditors. Your Orators can only speak as to these matters from information gathered by them from exhibit "C" and from outside sources, because said deed of trust has not been admitted to record, and because they have had no positive information as to its contents.

Your Orators further charge that it was a fraud upon your Orators, for said E. C. Jenkins to obtain from your Orators an extension of time on the debt he owed to it, upon the promise of giving your Orators a preference as aforesaid, if he was compelled to suspend business, afterward to execute a deed of trust to said Irvin Watkins, giving the said Gibson a preference, which had been promised, on valuable consideration, to your Orators.

Your Orators further charge that the said E. Courtney Jenkins, while professing to write to your Orators on behalf of the trustee, Mr. Irvin Watkins, requesting them to attend a general meeting of creditors, still withholds said deed of trust from record, and does not permit his creditors to know the contents thereof on the terms of the said deed of

trust. That, so far as your Orators know and believe, the business of the concern is carried on in the same manner as before the execution of the deed of trust, the sign being over the door and the place of business open as usual. Your Orators charge that the said deed of trust, made under the circumstances above mentioned, while it may be, as they are advised, good between the parties thereto, is void as to your Orators, as one of the creditors of said E. C. Jenkins & Co. And if, as appears to be the case, that the business is carried on as usual, and your Orators are informed, believe and charge, that it is so carried on, then the said E. C. Jenkins & Co. is exercising a power incompatible with the purpose of a deed designed to furnish an indemnity to the said George Gibson, for he is exercising a power adequate to defeat the purposes of such a deed, and that said deed of trust, being unrecorded, is under the statute of Virginia in such cases made and provided null and void as to creditors.

That your Orators are apprehensive, that under the pretext of said void deed of trust, and by virtue of authority which said E. C. Jenkins & Co., and said trustee, Irvin Watkins, may suppose they have the right to exercise thereunder, that the assets of the said concern may be wasted and disposed of by them, and the proceeds unlawfully appropriated to the payment of the liabilities for which the said George Gibson may be bound, or otherwise disposed of, in derogation of the rights of your Orators, as one of the creditors of said E. C. Jenkins & Co. In tender consideration, whereof, and inasmuch as your Orators are remedyless in the premises, save in a Court of Equity, where such matters are properly cognizable and relievable, your Orators pray that the said E. Courtney Jenkins, doing business under the name and style of E. C. Jenkins & Co., Irvin Watkins, trustee, and George Gibson, (which said Watkins and Gibson are each citizens of the State of Virginia, and residents of the city of Richmond,) may be made parties defendants to this bill of complaint, with apt and fit words to charge them as such, and that they and each of them be re-

quired to answer the allegations of this bill, but oath or affirmation to the said answer is waived. That said defendants, E. C. Jenkins & Co., be decreed to pay and satisfy your Orators' said demand, and that the assets property, and effects of said firm, be made liable therefor; and to this end, that the said E. C. Jenkins & Co., and Irvin Watkins, trustee, and all others, their agents and attorneys, be enjoined and restrained from selling, disposing of, or otherwise interfering with the goods, chattels, effects and property of said E. C. Jenkins & Co., until the further order of this court, and that a receiver be appointed to take charge of said goods, chattels, effects and property, and hold and keep the same subject to the order of this Honorable Court.

Your Orators pray that process may issue according to law, directed to said defendants, commanding them to appear, &c. That all proper orders and decrees may be made and accounts taken that may be necessary, and that all such further and general relief may be granted to your Orator as the nature of the case may demand, and to equity may seem meet and proper. And your Orators will ever pray, &c.

THE MILL CREEK DISTILLING CO.,
by John R. Sedgwick, Agent and Attorney.

JOHN A. COKE
AND
CARRINGTON & FITZHUGH,
Attorneys for Complainants.

STATE OF VIRGINIA, CITY OF RICHMOND, TO-WIT:

This day personally appeared before the undersigned, a Notary Public for said city, John R. Sedgwick, agent and attorney for the Mill Creek Distilling Company, the complainant in the foregoing bill, and made oath that the allegations in said bill, so far as made on his own knowledge, are true, and so far as made on knowledge or information derived from others, he believes them to be true.

Given under my hand this 10th day of January, 1883.

JOHN A. COKE, N. P.

IN THE UNITED STATES CIRCUIT COURT FOR THE EASTERN DISTRICT OF VIRGINIA.

SCHUFELDT & CO., vs. E. C. JENKINS AND OTHERS.
THE MILL CREEK DISTILLING COMPANY, vs. SAME.

These causes, and the several petitions mentioned and referred to in the decree rendered herein, on the 20th day of January, 1883, came on to be heard at this term, on the papers formerly read, and the depositions taken in said causes and petitions, and were argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

I. That the deed of trust in the bill, and proceedings mentioned from E. Courtney Jenkins to Irvin Watkins, trustee, dated on the 5th day of January, 1883, is null and void as to the creditors of E. Courtney Jenkins, who are plaintiffs in the above named causes and petitioners in said petitions, because the said deed of trust was not admitted to record in the proper office for recording deeds at the time of the institution of these causes, and at the time the property conveyed by the said deed of trust was taken possession of by the marshal of this court under its order, and because it was given by E. Courtney Jenkins with intent to hinder, delay and defraud said creditors, of which intent the said defendant, George Gibson, was cognizant, and in which he participated.

II. And the court, adopting and following the construction given by the Supreme Court of Appeals of Virginia to the statute of Virginia, being section two of chapter one hundred and seventy-five of the Code of Virginia of 1873, in relation to the right of creditors to institute suit to avoid a gift, conveyance, assignment, or transfer of or charge upon the estate of his debtor without first obtaining judgment, doth order, adjudge and decree, that the several plaintiffs in

the above-named causes, they having been brought at the same time, are entitled to participate, *pro rata*, in the fund in the hands of the receiver, subject to distribution, and have priority over all other claims; and that the several petitioners are entitled to share in the residue of the fund subject to distribution in the order in which their petitions were respectively filed—regarding the liens of the plaintiffs in said causes, and of the said petitioners as subsisting from the date of the filing of said bills or petitions respectively.

III. An order having already been entered directing the receiver to settle his accounts before a master, the court doth order that he proceed to do so with all convenient speed; and the court doth further order, that the said master do ascertain and report the amounts and priorities of claims of of the several complainants and petitioners, giving, however, to said complainants the priority above established; and upon the coming in of said reports, showing the amount of the fund for distribution and the amounts and priorities of the demands of said complainants and petitioners, the court will proceed to make a final decree in the premises.

And the defendants in open court pray an appeal from this decree, which is granted.

HUGH L. BOND,
Circuit Judge.
RO. W. HUGHES,
District Judge.

IN THE UNITED STATES CIRCUIT COURT FOR THE EASTERN DISTRICT OF VIRGINIA.

H. H. Shufeldt & Co. vs. E. C. Jenkins & Co., and als.,
and
The Mill Creek Distilling Co. vs. Same.
In Equity.

To the Honorable Judges of said Court:

Your commissioner, acting under the decree of this court, entered in these causes on the 8th day of October, 1884, and the previous decree of the 22nd day of September, 1884, submits the following report.

The decree of October, 8th, 1884, among other things, provides as follows: "An order having already been entered, "directing the receiver to settle his accounts before M. F. "Pleasants, master, the court doth order that he proceed to "do so with all convenient speed. And the court doth "order that the said master ascertain and report the amounts "and priorities of the claims of the several complainants "and petitions, giving, however, to said complainants the "priority above established. And upon the coming in of "said report, showing the amount of the fund for distribu- "tion, and the amount and priorities of the demands of said "complainants and petitioners, the court will proceed to "make a final decree in the premises."

Your commissioner has settled the account of R. P. Hughes, receiver, and the same was filed in the papers of this cause on the 1st day of May, 1885, showing: in the Planters Bank of Richmond for distribution, $22,092.69; balance due by the receiver, and not paid over, $3,700.12.

Your commissioner has ascertained from the papers, proofs and proceedings in these causes the amounts due the

complainants and petitioners in these causes, and has calculated the interest on the amount due each to the 10th day of May, 1885; and upon the principles laid down in said decree of October 8th, 1884, has ascertained the priorities of of said several creditors, and he now respectfully reports, in accordance with said decree, that the said creditors are entitled to participate in the distribution of the fund in bank, and what may hereafter be realized, in the following order of priority. Each class in the order herein named, to be paid before the creditor or creditors of the succeeding class are entitled to participate.

First Class.

H. H. Shufeldt & Co., principal,.....	$3,465 78
Interest to 10th May, 1885,.....	477 43
	3,943 21
Mill Creek Distilling Co., principal,.....	5,972 17
Interest to 10th May, 1885,.....	784 05
	$6,756 22

Second Class.

C. H. Ross & Co., principal,.....	$3,455 48
Interest to 10th May, 1885,.....	466 32
	$3,921 80

Third Class.

Griffith, Curtis & Co., principal,.....	$2,393 78
Interest to 10th May, 1885,.....	325 35
	$2,719 13

Fourth Class.

J. Hayes & Co., principal,.....	$100 15
Interest to 10th May, 1885,.....	13 60
	$113 75

Fifth Class.

Walsh & Kellogg, principal,	$6,557	19
Interest to 10th May, 1885,	896	61
	7,453	80
Gottschalk & Co., principal,	4,476	18
Interest to 10th May, 1885,	607	06
	$5,083	24

Sixth Class.

W. W. Johnson & Co., principal,	$3,354	53
Interest to 10th May, 1885,	442	52
	$3,797	05

Seventh Class.

Chas. Ewan & Co., principal,	$1,477	50
Interest to 10th May, 1885,	193	41
	$1,670	91

Eighth Class.

Maddux, Hobart & Co., principal,	$5,561	06
Interest to 10th May, 1885,	742	50
	$6,303	56
Aggregate of debts proved and embraced in foregoing eight classes, with interest to 10th May, 1885,	$41,762	67

Scheme of Distribution.

Amount in Bank for distribution	$22,092	69
Amount due for clerk's and marshal's fees, depositions, and other disbursements in these causes,	325	84
	21,766	85
Clerk's commissions, 1 per cent.	220	92
Carried forward,	21,545	93

Brought forward,.....	$21,545 93
Due Davenport & Morris, for storage (as per bill filed).....	21 00
	$21,524 93

To be paid as follows:

To H. H. Shufeldt & Co., with interest from 10th May, 1885, on $3,465.78 principal thereof	$3,943 21
To Mill Creek Distilling Co., with interest from 10th May, 1885, on $5,972.17, principal thereof	6,756 22
To C. H. Ross & Co., with interest from May 10th, 1885, on $3,455.48, principal thereof..	3,921 80
To Griffith Curtis & Co., with interest from May 10th, 1885, on $2,393.78, principal thereof..	2,719 13
To J. Hayes & Co., with interest from May 10th, 1885, on $100.15, principal thereof....	113 75
The balance ratably to the following creditors who stand on the same footing, that is to say,	
To Walsh & Kellogg.....	2,413 61
To Gottschalk & Co.,.....	1,657 21
	$21,524 93

Your commissioner files herewith as an exhibit, a detailed statement of the claims of the respective creditors, with detailed interest calculations.

Respectfully submitted,

M. F. Pleasants,
Special Commissioner.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

H. H. Shufeldt & Co., v. E. C. Jenkins & Co., et. als.,

and

Mill Creek Distilling Co., v. Same.

In Equity.

These causes came on this day to be further heard on the papers formerly read, and were argued by counsel. And the court, taking into consideration the report of the master, M. F. Pleasants, made pursuant to the decree of the 8th day of October, 1884, of the amounts due the plaintiffs and petitioners respectively, and the priorities of their respective claims, in accordance with the principles announced in the said last mentioned decree, which report was returned on the 6th day of May, 1885, and the parties have had one month from the time of filing said report to file exceptions thereto, and to which report no exceptions have been filed, doth order, adjudge and decree that the said report be, and the same is hereby approved and confirmed, and doth approve and confirm the statements of the amounts due the said plaintiffs and petitioners respectively, and the statement of the costs and expenses of the suits: and the scheme of distribution in said report, made of the fund to the credit of the court in these causes. And it appearing from the said report, that there is on hand in cash in the Planters National Bank of Richmond, and now ready for distribution in these causes, the sum of twenty-two thousand and ninety-two dollars and sixty-nine cents ($22,092.69), the court, proceeding now to dispose of and distribute the same, doth order, adjudge and decree, that after reserving in said bank the sum of two thousand five hundred dollars, subject to the future

order of this court, to meet such reasonable fees to the counsel of the parties plaintiff in these causes, who have recovered a fund for the general benefit of other creditors, as may hereafter be determined to be proper to be allowed, either out of the fund, or *pro rata* by all the creditors who partake of the benefit of these suits, the amount of such fees to be determined when the whole trust fund shall have been realized. The balance of nineteen thousand five hundred and ninety-two dollars and sixty nine cents ($19,592.69), shall be distributed as follows, that is to say, M. F. Pleasants, clerk of this court, shall check on said bank for the sum of five hundred and sixty-seven dollars and seventy-six cents, with which he shall pay the costs and expenses of these suits as reported in the said report, and he shall file receipts in the papers of this cause of his disbursement of said last named sum. The said M. F. Pleasants, clerk as aforesaid, shall check in proper form on said bank, and deliver checks,—

To H. H. Shufeldt & Co., for three thousand nine hundred and forty-three dollars and twenty-one cents ($3,943.21), with interest at the rate of six per centum per annum on $3,465.78, part thereof, from the 10th day of May, 1886, until paid; less, however, 11.62 per cent. on said sum of $3,943.21, reserved, as aforesaid, as their proportion of said $2,500.

To Mill Creek Distilling Company, for six thousand seven hundred and fifty-six dollars and twenty-two cents ($6,756.22), with interest at the rate of six per centum per annum on $5,972.17, part thereof, from the 10th day of May, 1885, until paid; less, however, 11.62 per cent. on said sum of $6,756.22, reserved, as aforesaid, as its proportion of said $2.500.

To C. H. Ross & Co., for three thousand nine hundred and twenty-one dollars and eighty cents, with interest at the rate of six per centum per annum on $3,455.48, part thereof, from the 10th day of May, 1885, until paid ($3,921.80); less, however, 11.62 per cent. on said sum of $3,921.80, reserved, as aforesaid, as their proportion of said $2,500.

To Griffith, Curtis & Co., for the sum of two thousand seven hundred and nineteen dollars and thirteen cents ($2,719.13), with interest at the rate of six per centum per annum on $2,393.78, part thereof, from the 10th day of May, 1885, until paid; less, however, 11.62 per cent. on said sum of $2,719.13, reserved as aforesaid as their proportion of said $2,500.

To J. Hayes & Co., for the sum of one hundred and thirteen dollars and seventy-five cents, with interest at the rate of six per centum per annum on $100.15, part thereof, from the 10th day of May, 1885, until paid; less, however, 11.62 per cent. of said sum of $100.75, reserved as aforesaid as their proportion of said $2,500. And for the balance, which is payable ratably to the following creditors who stand on the same footing, the said clerk shall issue like checks on said bank.

To Walsh & Kellogg for the sum of two thousand four hundred and thirteen dollars and sixty-one cents; less, however, 11.62 per cent. on said last named sum, reserved as aforesaid as their proportion of said $2,500; and

To Gottschalk & Co., for the sum of sixteen hundred and fifty-seven dollars and twenty-one cents; less, however, 11.62 per cent. on said last named sum, reserved as aforesaid as their proportion of the said $2,500.

And upon the payment into the said Planters National Bank of the sum of twenty-three hundred dollars, with interest from May 1, 1885, by the receiver, R. P. Hughes, or E. P. Murphy, his surety, pursuant to the decree entered herein, on the 16th day of May, 1885 said M. F. Pleasants, clerk, as aforesaid, is directed, after payment of any further costs or expenses which may have been incurred, if any, to apportion the balance of said fund of $2,300 between Walsh & Kellogg and Gottschalk & Co., ratably in proportion to their respective claims as set forth in the master's report; and the said M. F. Pleasants, clerk, is hereby authorized to check on said bank accordingly.

And the court further orders, that the statement marked "X," hereto annexed, showing in detail the scheme of distribution of the fund now on hand, as aforesaid, as embodied in this decree, be made a part of this decree. And this decree is final.

And the defendant, George Gibson, Irvin Watkins, trustee, etc., in open court, prays an appeal from the same, which is allowed by the court, and the penalty of the appeal bond is fixed at the sum of one thousand dollars.

RO. W. HUGHES, *Judge.*

RICHMOND, 13*th June*, 1885.

Paper marked "X" referred to as a part of this decree.

Total amount for distribution,	$22,092.69
Less 11.62 per cent. for fees, &c.,	2,500.00
	$19,592.69

DISTRIBUTION AS FOLLOWS.

To M. F. Pleasants, costs and expenses,					$567.76	
" H. H. Shufeldt & Co.,	$3,943.21,	less 11.62 per ct.,	$458.10	$3,485.11		
" Mill Creek Dist. Co.,	6,756.22,	" "	785.07	5,971.15		
" C. H. Ross & Co.,	3,921.80,	" "	455.71	3,466.09		
" Griffith, Curtis & Co.,	2,719.13,	" "	315.96	2,403.17		
" J. H. Hayes & Co.,	113.75,	" "	13.14	100.61		
" Walsh & Kellogg,	2,413.61,	" "	280.46	2,133.15		
" Gottschalk & Co.,	1,657.21,	" "	192.56	1,464.65		
	$21,524.93		$2,501.00		$19,023.93	
						$19,591.69

The above is a part of the decree of this date.

RO. W. HUGHES, *Judge.*

RICHMOND, 13*th June*, 1885.

122-27

JAN 6 1887
JAMES H. MCKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

GEORGE GIBSON
vs.
H. H. SHUFELDT & CO. ET ALS.

Motion to Dismiss Appeal under Rule 6 of Supreme Court.

WHITTET & SHEPPERSON, PRINTERS, RICHMOND, VA.

IN THE

Supreme Court of the United States.

GEORGE GIBSON
vs.
H. H. SHUFELDT & CO. ET ALS.

Motion to Dismiss Appeal under Rule 6 of Supreme Court.

STATEMENT OF CASE.

The appellees who composed the firm of H. H. Shufeldt & Co., who were citizens of Illinois, and creditors of E. Courtney Jenkins, filed their bill in equity on January 10th, 1883, in the Circuit Court of the United States for the Eastern District of Virginia, against E. Courtney Jenkins, doing business under the style of E. Courtney Jenkins & Co., Irvin Watkins, trustee, and George Gibson, citizens of Virginia, to annul, and set aside as fraudulent and void, a deed of trust from said E. Courtney Jenkins, dated 5th day of January, 1883, to Irvin Watkins, trustee, securing his creditors in certain orders of preference. The appellant, George Gibson, was first preferred; and the merchandise creditors, not described by name, were postponed to all others, and were required to execute a release of the grantor from all liability within sixty days from the date of the deed, as a condition of their participating in the benefits of the trusts. The appellees, H. H. Shufeldt & Co., and other creditors uniting in this motion, were embraced in this latter class. In this suit, the other merchandise creditors of E. C Jenkins filed petitions praying to be made parties plaintiff, and seeking the benefits of the proceedings and decrees therein.

On the same day, another suit in equity was instituted in the same court, and against the same defendants, for the same objects and purposes, by the Mill Creek Distilling Company, a corporation created by the laws of Ohio, also a creditor of E. Courtney Jenkins & Co.

Amended bills in each case were filed, making additional parties defendant. The two causes were heard together on full proofs, and, after a full argument, a decree was rendered by the court (Judges Bond and Hughes concurring) on the 8th day of October, 1884, declaring said deed of trust fraudulent and void, and setting it aside; and a reference to a master was directed to ascertain the priorities of the complainants and petitioning creditors, in the distribution of the fund realized from the trust estate, under the statutes and decisions in Virginia. After the filing of the master's report, the same was confirmed by the court, and a distribution made by the final decree of the 13th day of June, 1885, from which decree this appeal has been taken. This decree, which is the only paper in the record that the court will need to inspect for the purpose of this motion, is as follows:

DECREE.

H. H. SHUFELDT & Co.

vs.

E. C. JENKINS & Co. ET ALS.,

AND

MILL CREEK DISTILLING Co.

vs.

SAME.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA:

In Equity.

These causes came on this day to be further heard, on the papers formerly read, and were argued by counsel.

And the court, taking into consideration the report of the master, M. F. Pleasants, made pursuant to the decree of the 8th day of October, 1884, of the amounts due the plaintiffs and petitioners respectively, and the priorities of their respective claims, in accordance with the principles announced in the said last mentioned decree, which report was returned on the 6th day of May, 1885, and the parties have had one month from the time of filing said report to file exceptions thereto, and to which report no exceptions have been filed, doth order, adjudge and decree that the said report be and the same is hereby approved and confirmed, and doth approve and confirm the statements of the amounts due the said plaintiffs and petitioners respectively, and the statement of the costs and expenses of these suits, and the scheme of distribution in said report made of the fund to the credit of the court in these causes. And it appearing from the said report that there is on hand in cash, in the Planters National Bank of Richmond, and now ready for distribution in these causes, the sum of twenty-two thousand and ninety-two dollars and sixty-nine cents ($22,092.69)—the court, proceeding now to dispose of and distribute the same, doth order, adjudge and decree, that after reserving in said bank the sum of two thousand five hundred dollars, subject to the future order of this court, to meet such reasonable fees to the counsel of the parties plaintiffs in these causes, who have recovered a fund for the general benefit of other creditors, as may hereafter be determined to be proper to be allowed, either out of the fund or *pro rata* by all the creditors who partake of the benefit of these suits, the amount of such fees to be determined when the whole trust-fund shall have been realized, the balance of nineteen thousand five hundred and ninety-two dollars and sixty-nine cents ($19,592.69) shall be distributed as follows; that is to say:

M. F. Pleasants, clerk of this court, shall check on said bank for the sum of five hundred and sixty-seven dollars and seventy-six cents, with which he shall pay the costs and ex-

penses of these suits, as reported in the said report, and he shall file receipts in the papers of this cause of his disbursement of said last named sum.

The said M. F. Pleasants, clerk aforesaid, shall check in proper form on said bank and deliver checks—

To H. H. Shufeldt & Co., for three thousand nine hundred and forty-three dollars and twenty-one cents ($3,943.21), with interest at the rate of six per centum per annum, on $3,465.78, part thereof, from the 10th day of May, 1885, until paid; less, however, $11.62 per cent. on said sum of $3,943.21, reserved as aforesaid, as their proportion of said $2,500.

To Mill Creek Distillery Company, for six thousand seven hundred and fifty-six dollars and twenty-two cents ($6,756.22), with interest at the rate of six per centum per annum, on $5,972.17, part thereof, from the 10th day of May, 1885, until paid; less, however, $11.62 per cent. on said sum of $6,756.22, reserved as aforesaid, as its proportion of said $2,500.

To C. H. Ross & Co., for three thousand nine hundred and twenty-one dollars and eighty cents, with interest at the rate of six per centum per annum, on $3,455.48, part thereof, from the 10th day of May, 1885, until paid ($3,921.80); less, however, $11.62 per cent. on said sum of $3,921.80, reserved as aforesaid, as their proportion of said $2,500.

To Griffith, Curtis & Co., for the sum of two thousand seven hundred and nineteen dollars and thirteen cents ($2,719.13), with interest at the rate of six per centum per annum on $2,393.78, part thereof from the 10th day of May, 1885, until paid. Less, however, 11.62 per cent. on said sum of $2,719.13, reserved, as aforesaid, as their proportion of said $2,200.

To J. Hayes & Co., for the sum of one hundred and thirteen dollars and seventy-five cents, with interest at the rate of six per centum per annum on $100.15, part thereof from the 10th day of May, 1885, until paid. Less, however, 11.62 per cent. of said $113.75, reserved as aforesaid as

their proportion of said $2,500. And for the balance, which is payable ratably to the following creditors who stand on the same footing, the said clerk shall issue like checks on said bank.

To Walsh & Kellogg, for the sum of two thousand four hundred and thirteen dollars and sixty-one cents. Less, however, 11.62 per cent on said last named sum, reserved as aforesaid as their proportion of said $2,500; and

To Gottschalk & Co., for the sum of sixteen hundred and fifty-seven dollars and twenty-one cents. Less, however, 11.62 per cent on said last named sum, reserved, as aforesaid, as their proportion of the said $2,500.

And upon the payment into the said Planters National Bank of the sum of twenty-three hundred dollars, with interest from May 1, 1885, by the Receiver, R. P. Hughes, or E. P. Murphy, his surety, pursuant to the decree entered herein on the 16th day of May, 1885, said M. F. Pleasants, clerk as aforesaid, is directed, after payment of any further costs or expenses which may have been incurred, if any, to apportion the balance of said fund of $2,300 between Walsh & Kellogg and Gottschalk & Co., ratably in proportion to their respective claims as set forth in the master's report; and the said M. F. Pleasants, clerk, is hereby authorized to check on said bank accordingly.

And the court further orders that the statement marked "X," hereto annexed, showing in detail the scheme of distribution of the fund now on hand as aforesaid, as embodied in this decree, be made a part of this decree; and this decree is final. And the defendant, George Gibson, in open court, prays an appeal from the same, which is allowed by the court, and the penalty of the appeal bond is fixed at the sum of one thousand dollars.

Ro. M. Hughes, *Judge.*

Richmond, 13*th June*, 1885.

Paper marked "X" referred to as a part of this decree:

Total amount for distribution, - - -	$22,092 69
Less $11.62 per cent. for fees, &c., - -	2,500 00
	$19,592 69

DISTRIBUTED AS FOLLOWS.

To M. F. Pleasants, costs and expenses, - - - - - - -						$567 76
To H. H. Shufeldt & Co.,	$3,943.21, less $11.62 per cent.,			$458.10=	$3,485.11	
To Mill Creek Dist. Co.,	$6,756.22,	"	"	785.07=	5,971.15	
To C. H. Ross & Co.,	$3,921.80,	"	"	455.71=	3,466.09	
To Griffith, Curtis & Co.,	$2,719.13,	"	"	315.96=	2,403.17	
To J. H. Hayes & Co.,	$113.75	"	"	13.14=	100.61	
To Walsh & Kellogg,	$2,413.61,	"	"	280.46=	2,133.15	
To Gottschalk & Co.,	$1,657.21,	"	"	192.56=	1,464.65	
	$21,524.93			$2,501.00		$19,023 93
						$19,591 69

The above is a part of the decree of this date.

RO. M. HUGHES, *Judge.*

RICHMOND, 13*th June*, 1885.

ARGUMENT.

This is a motion by all the appellees (except Mill Creek Distilling Co.) to dismiss this appeal as to them for want of jurisdiction. The decree appealed from, printed in this brief, is the only paper in the record which the court will need to inspect to determine the question of jurisdiction.

An examination of this decree shows that as to said appellees respectively this court has no jurisdiction of the appeal, for the reason that the decrees in their favor are several, and that the amounts adjudged to be paid to them respectively do not exceed the sum or value of $5,000.

The decision of this court in *Stewart* v. *Dunham*, 115 U. S. Reports, page 61, is conclusive of this question, and upon the authority of that case and the cases there cited,

Seaver v. *Biglows*, 5 Wall. 208; *Schwed* v. *Smith*, 106 U. S. 186; *Farmers' Loan and Trust Co.* v. *Waterman*, 106 U. S. 265; *Adams* v. *Crittenden*, 106 U. S. 576; *Hawley* v. *Fairbanks*, 108 U. S. 543; *Fourth National Bank* v. *Stout*, 113 U. S. 684, we ask that the motion to dismiss this appeal as to all the appellees, except Mill Creek Distilling Company, be granted.

H. H. SHUFELDT & CO.,
C. H. ROSS & CO.,
GRIFFITH, CURTIS & CO.,
J. HAYES & CO.,
WALSH & KELLOGG,
GOTTSCHALK & CO.,
Appellees.

By W. W. CRUMP,
JOHN A. COKE,
Their Attorneys.

122-27

Supreme Court of the United States.

OCTOBER TERM, 1886.

GEORGE GIBSON AND IRVIN WATKINS, *Appellants*,

vs.

H. H. SHEFFELDT & CO., *et alios*.

No. 868.

APPEAL FROM CIRCUIT COURT EASTERN DISTRICT VIRGINIA.

On Motion to Dismiss.

WM. A. MAURY,
WM. W. CRUMP,
JOHN A. COKE,
Counsel for Appellees.

Supreme Court of the United States.

OCTOBER TERM, 1886.

GEORGE GIBSON AND IRVIN WATKINS, *Appellants,*

vs.

H. H. SHUFELDT & CO., *et alios.*

No. 868.

APPEAL FROM CIRCUIT COURT EASTERN DISTRICT VIRGINIA.

On Motion to Dismiss.

To Legh R. Page, Esquire, Counsel of record for Appellants:

SIR: You will please take notice that I shall move to dismiss the appeal in the above entitled cause as to all the appellees, excepting the Mill Creek Distilling Company, on the eleventh day of April, 1887, or so soon thereafter as the proposed motion can be submitted.

The ground on which the motion will be made is set forth in the brief, a copy of which, together with a copy of so much of the record as is deemed

sufficient to support the motion, accompanies this notice.

WM. A. MAURY,
Counsel for the Appellees.

WASHINGTON, D. C., 16th *March*, 1887.

Service of the above notice and of the copies of the brief and record therein referred to on the day of March, 1887, is hereby acknowledged.

Counsel for Appellants.

Statement.

E. Courtney Jenkins and Company, of the City of Richmond, Virginia, being embarrassed and compelled to suspend payment, the said Jenkins and Jenkins and Company made an assignment of social and individual property to the appellant, Irwin Watkins, in trust for certain preferred creditors, and then for the creditors at large. (R., pp. 23–28.)

The first in the order of preference in the deed is the appellant, George Gibson.

An original (R. pp. 2–7), and two amended bills (R. pp. 11–14 and 34–45), were filed by the appellees Shufeldt & Company impeaching the said deed of trust for fraud.

A bill for the same purpose was, at the same time, filed by the Mill Creek Distilling Company against Jenkins and Company. (R. pp. 62–66).

By order of court the two causes were heard together.

The causes, including the petitions of several creditors praying to be allowed to participate in the benefits of the suits, came on for hearing, and on due consideration the court decreed that the said deed of trust was fraudulent and void as against the said complainants and petitioners. (R. pp. 67–68).

The decree then settles the order in which the assets of Jenkins and Company shall be distributed among complainants and the petitioners and refers the causes to a Master with directions to report the amounts due and the priorities of the several creditors.

The Master duly reported to the court as to the said particulars. (R. pp. 69–72).

The court confirmed the Master's Report, and at the same time decreed, amongst other things, that the fund for distribution should be paid in the amounts and to the persons following:

To Shufeldt & Co.	$3,485.11
" Mill Creek Distilling Co	5,971.15
" C. H. Ross & Co	3,466.09
" Griffith, Curtis & Co	2,403.17
" J. H. Hayes & Co	100.61
" Walsh & Kellogg	2,133.15
" Gottschalk & Co	1,464.65

(R. pp. 73-76.)

From this decree, as well as from the former one settling the principles involved in the cause, the defendants, George Gibson and Irvin Watkins, appealed to this court. (R., pp. 68 and 76.)

Argument.

An inspection of the decree of distribution (p. 76) shows that this court has no jurisdiction to entertain this appeal as against any of the appellees except the Mill Creek Distilling Company, which is not a party to this motion, and will not be mentioned again in connection with it.

This court has held, until it has become trite, that when several demands, distinct in nature, are, under the liberal practice in Equity and Admiralty, prosecuted in one and the same suit against a common debtor, they lose none of their distinctiveness by the joinder, and, therefore, if the creditors appeal the jurisdiction of the Court will fail, as in ordinary cases, as to any one of them whose demand does not exceed the sum of five thousand dollars, and if the debtor or other party having an interest adverse to that of the creditors appeal, the jurisdiction will in like manner fail as to any creditor to whom the amount adjudged does not exceed the sum of five thousand dollars. In other words, the joinder of the creditors does not place them in any ~~better~~ other position, so far as the jurisdiction of this court is concerned, than if each one had brought a separate suit.

Sched vs. *Smith*, 106, U. S., 188.
Elgin vs. *Marshall*, *ib.* 578–582.
Ex parte Balt. & Oh. R. R. Co., *ib.* 5
Seaver vs. *Biglows*, 5 Wall., 208.
Stewart vs. *Dunham*, 115, U. S., 61, 65.
Farmers Loan & Trust Co., vs. *Waterman*, 106, U. S., 265.
Adams vs. *Crittenden*, 106, U. S., 576.
Hawley vs. *Fairbanks*, 108, U. S., 543.
Fourth National Bank vs. *Stout*, 113, U. S., 684.

In view, then, of the law, thus settled, it would seem to follow that, as the amount in controversy between the appellants and each of the appellees, who is a party to this motion, is less than $5,000, the appeal must be dismissed as to the said appellees.

WM. A. MAURY,
WM. W. CRUMP,
JOHN A. COKE,
Counsel for Appellees.

122-27

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 868.

GEORGE GIBSON, APPELLANT,

vs.

H. H. SHUFELDT & CO. ET AL.

Extract from the Record.

Petition of Griffiths, Curtis & Co.

TO THE HONORABLE JUDGE OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA:

Your Petitioners, John Griffiths, Frank Curtis, and Henry P. Staats, doing business under the firm name and style of Griffiths, Curtis & Co., respectfully show to the court that E. Courtney Jenkins, doing business under the name and style of E. Courtney Jenkins & Co., is indebted to your petitioners in the sum of $2,600 or $2,700, evidenced by notes. As to a part of the said indebtedness, he, the said E. Courtney Jenkins, is in favor of Griffiths, Curtis & Co., your petitioners, the original of which said notes will be filed before they may be essential to the purposes and proceedings of this

cause; the considerations for which said indebtedness are various goods, wares and merchandise, sold and delivered by your petitioners to the said E. Courtney Jenkins & Co.

Your petitioners allege that the deed of trust referred to in bill, papers and exhibits in this suit is fraudulent and void as to your said petitioners, and that the property, goods, wares, etc., included in and purporting to be conveyed by said deed from the said E. Courtney Jenkins & Co. to the trustees in said deed, are subject to and liable for your petitioners' debt; and your petitioners further charge, allege, and insist, that said deed of trust was made to delay, hinder and defraud the creditors of said E. Courtney Jenkins & Co., and, among others, your petitioners.

Your petitioners adopt as their own the allegations and charges of said bill, as far as they relate or pertain to themselves, as fully and completely as though said allegations and charges were herein again set forth.

Your petitioners, therefore, pray that they be allowed to file this their petition in the suit of H. Shufeldt & Co. against E. Courtney Jenkins & Co., Irvin Watkins, trustee, and Geo. Gibson; and that they may be constituted parties plaintiff to said suit upon the terms of contributing their proportion to the costs of said suit; and they further pray that their said debt be decreed and ordered to be satisfied out of the property and effects of said E. Courtney Jenkins & Co., and that they be given all such other and further relief as is prayed for in the suit of *H. Shufeldt & Co.* v. *E. Courtney Jenkins & Co. and others.* And your petitioners will ever pray.

GRIFFITHS, CURTIS & CO.,
By GEO. I. HERRING.

McGUIRE & ELLETT, *of Counsel for Petitioners.*

122-27

IN THE

Supreme Court of the United States.

GEORGE GIBSON

vs

H. H. SHUFELDT & CO. ET ALS.

To the Honorable Judge of the Circuit Court of the United States for the Eastern District of Virginia:

The petition of O. Diffendorfer, Simon J. Kemp and Richard C. Kemp, merchants and partners trading under the firm and style of Charles H. Ross & Co., respectfully shows to the court that E. Courtney Jenkins, doing business under the name and style of E. Courtney Jenkins & Co., is indebted to your petitioners in the sum of $3,100 to $3,200, evidenced by notes of said E. C. Jenkins & Co., in favor of your petitioners, the original of which will be filed when called for by this court, or when necessary for these proceedings; that the consideration of said indebtedness is goods and merchandise sold and delivered to said E. Courtney Jenkins & Co. by your petitioners.

Your petitioners insist that the deed of trust, referred to in the bill and exhibits in this cause, is fraudulent and void as to your petitioners, and that the goods, chattels, effects and property of said E. Courtney Jenkins & Co. embraced therein are liable for your petitioners' debt; and they further charge that said deed of trust was made to delay, hinder and

defraud your petitioners and the other creditors of said E. Courtney Jenkins & Co.

Your petitioners here adopt the allegations of said bill, so far as applicable to their case, as fully as though the same were set forth herein in detail.

Your petitioners therefore ask leave to file their petition in said cause of Henry H. Shufeldt & Co. against said E. Courtney Jenkins & Co., Irvin Watkins, trustee, and George Gibson, and to be made a party plaintiff to said suit, upon the terms of contributing their proportion of the costs of said suit; and they pray that their said debt be decreed to be paid out of the goods, chattels, effects and property of said E. Courtney Jenkins & Co., and that they be accorded all such relief as is prayed for in said cause of Henry H. Shufeldt & Co. against said E. Courtney Jenkins & Co. and others; and your petitioners will ever pray, etc.

CHARLES H. ROSS & CO.,
by Charles H. Harvey & Co.

Petition of Griffith Curtis & Co., marked No. 2, is missing from original record.

TO THE HONORABLE JUDGE OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA:

Your petitioner, J. Hayes, trading under style of J. Hayes & Co., respectfully represents to the court that E. Courtney Jenkins, doing business as E. Courtney Jenkins & Co., is indebted to them in the sum of $100.15, for goods sold and delivered to him.

Your petitioner charges that the deed of trust, referred to in the bill and exhibits in this cause, was made to hinder, delay and defraud your petitioners and other creditors of said E. Courtney Jenkins & Co., and that the same is void for this reason, and because the same has not been admitted to record; and your petitioners adopt the allegations of the

complainants in this suit so far as applicable, as fully as though the same were set forth herein in detail.

Your petitioners pray to be made a party plaintiff to this cause upon the terms of contributing their proportion of the costs of this suit,—that the property, effects, goods and chattels of said E. Courtney Jenkins & Co., be subjected to the payment of your petitioners' debt; that all such relief as is prayed for in said bill of complaint of Henry H. Shufeldt & Co., against E. Courtney Jenkins & Co., Irvin Watkins, trustee, and George Gibson be accorded to your petitioners, and for general relief; and your petitioners will ever pray etc.

J. Hayes & Co., *by Counsel.*

To the Honorable Judge of the Circuit Court of the United States for the Eastern District of Virginia:

Your petitioners, James Walsh and Charles H. Kellogg, Jr., merchants and partners under the firm and style of Walsh & Kellogg, respectfully show to the court that they are creditors of E. Courtney Jenkins, doing business under the name and style of E. Courtney Jenkins & Co., that the indebtedness of E. Courtney Jenkins & Co. to your petitioners in the sum of $6,572.03, evidenced by notes, some of which are past due, and others maturing at different dates, as will appear by statement of said notes hereto annexed as exhibit "A," and made a part of this petition, the original notes of said E. Courtney Jenkins & Co., held by your petitioners, will be filed whenever required by the court, or when it becomes necessary in the course of these proceedings.

Your petitioners insist and charge that the deed of trust referred to in the bill in this cause, made by said E. Courtney Jenkins & Co. to Irvin Watkins, trustee, is void, the same not having been admitted to record, according to the statute in such cases made and provided, and that said deed was made to delay, hinder and defraud your petitioners, and the other creditors of said E. Courtney Jenkins, and that your

petitioners are entitled to be paid their said debt out of the goods, chattels, effects and property so conveyed.

Your petitioners adopt all the allegations in said bill in this cause applicable to their case.

Your petitioners therefore pray the court that they be made parties plaintiff to said suit, upon contributing their proportion of the costs of this suit; that a decree be entered subjecting said property and assets to the payment of your petitioners' debt; that all such relief as is prayed for in the bill of H. H. Shufeldt & Co., against said E. Courtney Jenkins & Co., and others be accorded to your Orators and for general relief.

WALSH & KELLOGG,
Per T. M. KENT.

Sworn to and subscribed before me, this 11th day of January, 1883.

JOHN A. COKE,
Notary Public for the City of Richmond.

TO THE HONORABLE JUDGE OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA:

Your petitioner, Albert Gottschalk, trading as Gottschalk & Co., respectfully show to the court that he is a creditor of E. Courtney Jenkins & Co.; that the indebtedness of said E. Courtney Jenkins & Co. to your petitioner is about the sum of $5,000, evidenced by notes, some of which are past due and others to mature at various dates, a statement of all which will be filed with this petition, as a part thereof, and the original notes will be filed by your petitioners when required by the court, or when the same becomes necessary in the course of these proceedings.

Your petitioner insists and charges that the deed of trust referred to in the bill in this cause, made by said E. Courtney Jenkins & Co. to Irvin Watkins, trustee, is void, the same

not having been admitted to record, according to the statute in such cases made and provided, and that said deed was made to delay, hinder and defraud your petitioners and the other creditors of said E. Courtney Jenkins & Co., and that your petitioners are entitled to be paid their said debt out of the goods, chattels, effects and property so conveyed.

Your petitioners adopt as a part of this petition the allegations in the bill of complaint filed in this cause applicable to their case.

Your petitioners therefore pray the court, that they be made parties plaintiff to this cause upon contributing their proportion of the costs of this suit; that a decree be entered subjecting to the payment of your petitioners' debt the said property and effects; that all the relief prayed for in said cause of H. H. Shufeldt & Co. against said E. Courtney Jenkins & Co. be accorded to your petitioners, and for general relief; and your petitioners will ever pray, etc.

GOTTSCHALK & CO.

Sworn to and subscribed before me, this 11th day of January, 1883.

JOHN A. COKE,
Notary Public for the City of Richmond, Va.

TO THE HONORABLE JUDGE OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA:

Your petitioner, William W. Johnson, trading under the style of W. W. Johnson & Co., citizens of the State of Ohio, respectfully show to the court that E. Courtney Jenkins, doing business as E. Courtney Jenkins & Co., is indebted to your petitioners in the sum of about $3,500, as will fully appear by statement of said indebtedness, to be filed herein as a part of this petition. The consideration of of said indebtedness is goods and merchandise sold and de-

livered by your petitioneers to said E. Courtney Jenkins & Co.

Your petitioners charge that the deed of trust referred to in the bill and exhibits in this cause, was made to hinder, delay and defraud your petitioners, and the other creditors of said E. Courtney Jenkins & Co., and that it is void for that reason, and because the same was not recorded as provided by law. And your petitioners adopt the allegations of the bill in this cause applicable to their case as part of their petition.

Your petitioners charge that they are entitled to subject the property referred to in said deed of trust to the payment of their debt, and to that end they pray the court to be made parties plaintiff hereto on the terms of contributing their proportion of the costs of this suit; that a decree be entered subjecting the property and assets of said E. Courtney Jenkins & Co., to the payment of petitioners debt; that all the relief prayed for by the complainants in this suit be accorded to your petitioners, and for general relief, and they will ever pray, &c.

W. W. Johnson & Co.
by Counsel.

John A. Coke,
Attorney.

To the Honorable Judge of the Circuit Court of the United States for the Eastern District of Virginia.

Your petitioners, Charles Ewan and —— Ewan, merchants and partners under the firm and style of Charles Ewan & Son, citizens of the State of New Jersey, respectfully show to the court that E. Courtney Jenkins, doing business under the name and style of E. Courtney Jenkins & Co., is indebted to your petitioners in the sum of $1,470.50, for goods and merchandise sold and delivered to him, as per itemized statement

herewith filed as exhibits "A," and prayed to be taken as a part of this petition. $451.50, of said amount is evidenced by note of said E. Courtney Jenkins & Co., dated Aug. 29th, 1882, at four months, and was protested for non-payment on 2nd day of January 1883, the charges of which protest, $2.23, are also due your petitioners in addition to the sum first above named. Another part of said first named sum, to-wit, $510, is evidenced by note of said E. Courtney Jenkins & Co., dated Nov. 14th, 1882, at four months. And the balance thereof, to-wit, $516, was due and payable on delivery of the goods, the same being a cash bill, and the said amount of $516.00 is past due. Your petitioners say that, if said deed is fraudulent and void, as alleged in the bill of complaint filed in this cause, that under the law in such cases made and provided, they are entitled to subject the property and estate conveyed in said deed to the payment of their said debt; and they further charge that the last item of $516.00 being for goods sold for cash, and not on credit, that their title to said goods not being diverted, they are entitled to recover possession of said goods. And your petitioners say they can identify their said goods.

Your petitioners pray the court that they be made parties plaintiff to said suit, upon the terms of contributing their proportion of the costs thereof; that the goods on hand of your petitioners embraced in said cash bill be returned to them; that the property of said E. Courtney Jenkins & Co. be subjected to the payment of the debt due your petitioners; that all such relief prayed for in the cause of H. H. Shufeldt & Co. against said E. Courtney Jenkins & Co. *et als*, as is applicable to your petitioners' case be accorded to them for general relief, and your petitioners will ever pray &c.

CHARLES EWAN & SON.

by Counsel.

To the Honorable Judge of the Circuit Court of the United States for the Eastern District of Virginia:

Your petitioners, Maddux, Hobart & Co., of Cincinnati, Ohio, consisting of the estate of Wm. B. Maddux, Wm. N. Hobart and Lewis O. Maddux, show to the court, that they are creditors of E. Courtney Jenkins, lately doing business in the city of Richmond, Va., under the firm-name of E. Courtney Jenkins & Co.; that these petitioners' claim amounts to $5,561.06, evidenced by notes of said creditor, on open account, which will be produced before the court when required; that a bill in equity has been filed in this honorable court by H. H. Shufeldt & Co., plaintiffs, charging a fraudulent conveyance by said Jenkins of his goods and property, and seeking to subject the same to the payment of his debts.

These petitioners ask, that they may be permitted to file this, their petition, in said suit, and become parties plaintiff upon the usual terms; that their claim be allowed and enforced against the said E. Courtney Jenkins & Co., and that the same be paid in the proper order of priority. That all the relief prayed for in said bill be accorded to these petitioners, and for general relief.

James H. Capers, *Agent.*
Maddux, Hobart & Co.,
by Cannon & Courtney,
Their Counsel.

Subscribed and sworn to before me, this 12th day of January, 1883, by James H. Capers, Agent.

M. F. Pleasants, *Clerk.*